Supreme Court, U. S.
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No. 74-204

# In the Supreme Court of the United States

OCTOBER TERM, 1974

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CASPAR WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE, PETITIONER

*v.*

GEORGE H. ELDRIDGE

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*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT*

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**ROBERT H. BORK,**
*Solicitor General,*
**CARLA A. HILLS,**
*Assistant Attorney General,*
**GERALD P. NORTON,**
*Assistant to the Solicitor General,*
**STEPHEN F. EILPERIN,**
**JAMES C. HAIR, JR.,**
*Attorneys,*
*Department of Justice,*
*Washington, D.C. 20530.*

# INDEX


| | Page |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Question presented | 2 |
| Constitutional provision and regulations involved | 2 |
| Statement | 2 |
| Reasons for granting the writ | 6 |
| Conclusion | 15 |
| Appendix A | 1A |
| Appendix B | 3A |
| Appendix C | 19A |


CITATIONS


Cases:

| | |
|---|---|
| *Arnett* v. *Kennedy*, No. 72–1118, decided April 16, 1974 | 13 |
| *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, No. 73–157, decided May 15, 1974 | 14 |
| *Elliott* v. *Weinberger*, 371 F. Supp. 960, appeal pending, C.A. 9 (No. 74–1611) | 9 |
| *Frost* v. *Weinberger*, No. 73–1383, decided May 3, 1974 | 10 |
| *Fuentes* v. *Shevin*, 407 U.S. 67 | 14 |
| *Goldberg* v. *Kelly*, 397 U.S. 254 | 6, 8, 10, 12, 13, 14, 15 |
| *Jamieson* v. *Weinberger*, E.D. Pa., Civ. No. 73–585, decided June 17, 1974 | 10 |
| *Jarbo* v. *Weinberger*, W.D. Wash., No. 727–73C2, decided November 14, 1973 | 10 |
| *Knuckles* v. *Weinberger*, 371 F. Supp. 565, appeal pending, C.A. 9 (No. 74–1611) | 10 |
| *Mattern* v. *Weinberger*, E.D. Pa., Civ. No. 72–2522, decided April 30, 1974 | 9–10 |
| *Mitchell* v. *W. T. Grant Co.*, No. 72–6160, decided May 13, 1974 | 14 |
| *Richardson* v. *Perales*, 402 U.S. 389 | 13, 15 |
| *Richardson* v. *Wright*, 405 U.S. 208 | 6, 7 |
| *Wheeler* v. *Montgomery*, 397 U.S. 280 | 6 |
| *Williams* v. *Weinberger*, 494 F. 2d 1191 | 8 |

| Constitution and statutes: | Page. |
|---|---|
| Constitution of the United States: Fifth amendment | 2 |
| 18 U.S.C. 1001 | 13 |
| 26 U.S.C. 6674 | 13 |
| 26 U.S.C. 7204 | 13 |
| Social Security Act 49 Stat. 620, *et seq.*, as amended: | |
| 42 U.S.C. 401 | 10 |
| 42 U.S.C. 408 | 13 |
| 42 U.S.C. 416(i)(1) | 11 |
| 42 U.S.C. 421 | 3 |
| 42 U.S.C. 423(a)(1)(D) | 4, 5 |
| 42 U.S.C. 423(d) | 11 |
| Miscellaneous: | |
| H. Rept. No. 544, 90th Cong., 1st Sess. | 11 |
| S. Rept. No. 744, 90th Cong., 1st Sess. | 11 |


# In the Supreme Court of the United States

OCTOBER TERM, 1974

No.

CASPAR WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE, PETITIONER

*v.*

GEORGE H. ELDRIDGE

***PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT***

The Solicitor General, on behalf of the Secretary of Health, Education and Welfare, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

## OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 1A–2A) is reported at 493 F. 2d 1230. The opinion and order of the district court (App. B, *infra*, pp. 3A–18A) is reported at 361 F. Supp. 520.

## JURISDICTION

The judgment of the court of appeals was entered on April 1, 1974. On July 1, 1974, Mr. Chief Justice Burger extended the time for filing a petition for a

writ of certiorari to and including August 29, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### QUESTION PRESENTED

Whether administrative procedures governing the termination of Social Security disability benefit payments, under which, prior to termination, a beneficiary is given a summary of the evidentiary basis for the proposed termination and an opportunity to submit additional evidence and a written rebuttal, but not an oral hearing, are constitutional.

### CONSTITUTIONAL PROVISION AND REGULATIONS INVOLVED

The Fifth Amendment of the Constitution provides in relevant part:

> No person shall be * * * deprived of * * * property, without due process of law * * *.

The pertinent regulations of the Department of Health, Education and Welfare, contained in the Disability Insurance State Manual ("DISM"), are set forth in Appendix C, *infra*, pp. 19A–75A.

### STATEMENT

The facts are not in dispute and are set forth in the opinion and order of the district court (App. B, *infra*, pp. 4A–6A). Respondent George Eldridge, a resident of Virginia, applied for and was awarded Social Security disability benefits beginning in June 1968. The notice of the award of benefits advised him that his claim would be reexamined because of possible medical improvement, and that his benefits would be terminated if such review showed he was no longer disabled.



Respondent's disability entitlement was reviewed for possible medical improvement in early 1972.[1]

In response to a questionnaire from the Virginia state agency,[2] respondent indicated that his condition had not improved. The state agency also received medical reports from his personal physician and from a psychiatric consultant who had examined him. On May 16, 1972, respondent was advised by the state agency as follows:

> We previously informed you that we were asked by the Social Security Administration to help determine whether your impairment still prevents you from working. Although you indicate on the report you recently completed for us that you do not feel your condition has improved so that you are able to return to work, the other information and evidence in your case shows that you are able to work, and have been since May, 1972.
>
> You were initially found to be disabled due to chronic anxiety and back strain. In addition

[1] In February 1970, following medical review of respondent's disability entitlement, the Social Security Administration determined that his disability had ceased as of the prior month. Accordingly, under procedures in effect at that time, his benefits were suspended. Respondent requested reconsideration in April 1970 and, five months later, brought suit seeking an administrative hearing prior to suspension of benefits. The district court ordered that payment of benefits be continued pending action on his claim. In April 1971, following an administrative hearing, respondent's disability was found not to have ceased. Thereafter, the district court dismissed his action as moot (Pet. App. B, *infra*, p. 4A).

[2] Pursuant to 42 U.S.C. 421, initial determinations as to whether or when a claimant became disabled, and whether or when a beneficiary's disability ceased, are made by a state agency.

you have been found to have diabetes. Medical evidence shows no significant motion limitation of your back which would impose severe functional restrictions. Diabetes is under control and no complications have been noted, secondary to this. Although you remain somewhat anxious, there is no indications [sic] of continued emotional problems of sufficient severity to preclude all work for which you are qualified.

Therefore, disability benefits being paid on your social security number may be stopped unless additional evidence is submitted which shows that you are still unable to work because of your impairment.

If you have additional information you want us to consider, please let us know immediately, using the enclosed envelope; a reasonable additional amount of time will be granted where necessary for you to obtain and submit additional evidence. If we do not hear from you within ten days, we will forward your records to the Social Security Administration and when a formal decision is made you will be notified.

Under the Social Security Law, benefits may be paid for a three-month period of adjustment. This period includes the month in which you have a regained ability to work and two additional months.

By letter of May 25, 1972, respondent advised the state agency that it already had enough evidence on file to prove his disability and that it should proceed with the decision.

In June 1972, acting pursuant to 42 U.S.C. 423(a)(1)(D), the Bureau of Disability Insurance of the Social Security Administration approved the state



agency's determination that respondent's disability had ceased as of May 1972 and that his benefits would accordingly terminate after July 1972.[3] On July 7, 1972, respondent was notified of this initial determination, and advised of his right to request reconsideration within six months.

Rather than seek reconsideration, respondent instituted the present action on August 3, 1973, seeking a declaration that the administrative procedures established by the regulations were unconstitutional and an injunction requiring the Secretary to continue paying respondent benefits until he is afforded an oral evidentiary hearing concerning the cessation of his disability. The Secretary moved to dismiss on the ground that respondent's benefits had been terminated pursuant to lawful regulations that do not violate due process. On February 13, 1973, the district court ordered respondent's benefits reinstated pending its final disposition of the case on the merits.

On April 9, 1973, the district court held that the administrative procedures under which respondent's benefits were terminated without a prior oral hearing were unconstitutional (App. B, *infra,* pp. 6A–18A). The court noted that the only issue to be resolved was whether such procedures satisfy the minimum requirements of due process, there being no dispute that the termination of respondent's benefits fully complied with the applicable procedure. The court ruled that, in terms of the recipient's interest in

[3] Under the Social Security Act (42 U.S.C. 423(a)(1)(D)), benefit payments are not actually terminated until two months after the month in which disability is found to have ceased.

avoiding, through pre-termination evidentiary hearings, an erroneous loss of benefits, the termination of Social Security disability benefits is indistinguishable from the termination of state of welfare benefits involved in *Goldberg* v. *Kelly*, 397 U.S. 254, and *Wheeler* v. *Montgomery*, 397 U.S. 280 (App. B, *infra*, pp. 8A–10A). The court further ruled that, because disability determinations may involve subjective judgments in resolving conflicting medical evidence and are not exclusively based upon "objective" medical evidence, a due process standard different from that required by *Goldberg* v. *Kelly* for termination of welfare benefits is not justified for termination of Social Security disability benefits (*id.* at 10A–13A). Accordingly, the court remanded the case to the Secretary for the payment of disability benefits and for further proceedings not inconsistent with the court's opinion (*id.* at 18A).

The court of appeals affirmed on the opinion of the district court (App. A, *infra*, p. 2A).

## REASONS FOR GRANTING THE WRIT

1. In 1971 Term, in *Richardson* v. *Wright*, 405 U.S. 208, the Court had before it the question whether the procedural requirements held applicable to termination of state welfare benefits in *Goldberg* v. *Kelly*, *supra*, and *Wheeler* v. *Montgomery*, *supra*, also applied to the termination of federal disability benefits. Resolution of that question was aptly described as being "vitally essential to the administration of an important Government program * * *." *Id.* at 214 (Brennan, J., dissenting). Because the procedures under challenge there had been substantially revised by the Secretary while the case was pending in this Court, the Court vacated the judgment of the district court (which had held the superseded procedures unconstitutional) and remanded the case to the Secretary for reprocessing under the new regulations, with the observation that "[i]n the context of a comprehensive complex administrative program, the administrative process must have a reasonable opportunity to evolve procedures to meet needs as they arise." *Id.* at 209.



The evolutionary process under way in 1972 has been completed,[4] and the question presented in *Wright* is now ripe for decision. Moreover, further guidance from this Court at this time would greatly assist the government in its continuing efforts to find procedures that are fair and that work efficiently and effectively in delivering to eligible recipients as benefits, rather than expending as administrative costs, the maximum amount of the limited resources available for such programs.

2. A decision by this Court as to the constitutionality of the challenged procedures is still "vitally essential" to the Secretary's administration of the Social Security disability benefit program and other programs.

Under the current administrative procedures governing the termination of Social Security disability benefits, the Secretary presently terminates the bene-

[4] The procedures now in effect differ substantially from those challenged in *Wright* with respect to terminations based on both return to work and medical recovery. Compare 405 U.S. at 213, n.2.

fits of approximately 87,600 disability beneficiaries (and their dependents) each year because their disabilities are found to have ceased. Of these terminations, fewer than 2,400 per year proceed to the post-termination oral evidentiary hearings provided under current procedures.[5] In the Secretary's judgment, the court of appeals' holding that *Goldberg* v. *Kelly, supra,* requires that disability beneficiaries be afforded oral evidentiary hearings prior to termination,[6] if allowed to stand, will severely tax the capacity of the Social Security Administration to conduct an effective disability pogram,[7] and will result in substantial

[5] These annual termination and hearing rates are estimates of the Social Security Administration based on data available through July 1974.

[6] On the basis of the decision in the instant case, the disability benefit termination procedures were also held unconstitutional in *Williams* v. *Weinberger*, 494 F. 2d 1191 (C.A. 5), in which a petition for a writ of certiorari is also being filed.

[7] A requirement of pre-termination oral hearings would be likely to result in a significantly increased number of requests for hearings, since a beneficiary would thereby be able to force continued payment of benefits. This likelihood is underscored by the states' experience after this Court's decision in *Goldberg* v. *Kelly*, *supra*, decided in March 1970: according to the Social Security Administration, welfare recipients' requests for hearings, which that case required before the termination of benefits, increased from 19,400 during the January-June 1970 period to 67,167 during the July-December 1971 period. (The number of requests for hearings has since continued to increase, but at a decreased rate.) To accommodate promptly the increased numbers of pre-termination disability hearings that would probably be requested, so as to minimize the amount of benefits that would have to be paid until completion of the hearing process, the corps of Social Security administrative law judges would have to be substantially augmented. But, aside from the added expense, such an expanison of personnel would be difficult to achieve, for the Social Security Administration has serious difficulties in finding sufficient qualified individuals willing to fill even its current needs. The result for the indefinite future would be an over-burdening of existing personnel and a concomitant decrease in the effective administration of the disability program.



losses to the Social Security trust fund.[8] Furthermore, since procedures similar to those governing disability benefit terminations are also used in reducing or suspending disability benefits in order to recoup overpayments, and in terminating, reducing, or suspending old age and survivors insurance benefits,[9] the adverse

[8] The Social Security Administration estimates that the cost per year—in medical recovery cases alone—of continuing the payment of disability benefits until after oral hearings are held would be $30 million or more. This overpayment of benefits figure was calculated on the assumptions that: (1) beneficiaries would be given 30 days in which to request pre-termination hearings; (2) completion of the hearing process would take another 5 months (based on the average time in 1973 of 151 days between requests for and the holding of post-termination hearings); (3) approximately two-thirds of those whose disability is initially found to have ceased would request a pre-termination hearing; (4) 24,396 pre-termination hearings would be held each year (based on estimated totals for fiscal 1974); (5) the average cost of conducting an oral evidentiary hearing would be $546 (based on such cost as of December 1973); and (6) the average monthly benefits paid to a disability beneficiary and his dependents would be $388 (based on such benefits as of April 1974). The overpayment of benefits figure has been reduced to account for: (1) the recovery by the Administration of benefit overpayments from those beneficiaries able to repay (estimated at one-third based on past experience); and (2) the two months of benefits to which each terminated beneficiary is entitled by law after the month in which his disability is determined to have ceased (*i.e.*, two of the six months assumed necessary for completion of the hearing process would not represent overpayment expense).

[9] The administrative procedures under which the Secretary temporarily reduces Title II benefits without a prior oral hear-

Continued)

impact of the court of appeals' holding threatens other programs administered by the Secretary under Title II of the Social Security Act.[10] The need for this Court to determine the constitutionality of these administrative procedures is therefore plain.

3. The decision of the court of appeals that the current procedures for terminating Social Security disability payments do not provide due process is erroneous, is not compelled by the decision in *Goldberg* v. *Kelly*, *supra*, and conflicts with the principles established in decisions of this Court since *Goldberg* v. *Kelly*.

Under the challenged procedures, prior to the initial award of disability benefits every claimant is advised that, if his condition improves to the extent that he is no longer unable to engage in substantial gainful employment, his benefits will cease. Thereafter, upon receipt by the Social Security Administration of in-

(Continued)

ing in order to recoup overpayments have been held unconstitutional in *Elliott* v. *Weinberger*, 371 F. Supp. 960 (D. Hawaii), appeal pending (C.A. 9, No. 74–1611), and *Mattern* v. *Weinberger*, E.D. Pa., Civ. No. 72–2522, decided April 30, 1974, appeal pending. *Contra*, *Jarbo* v. *Weinberger*, No. 727–73C2 (W.D. Wash), decided November 14, 1973. Similarly, the reduction of survivors' benefits without a prior oral hearing because of their allocation among additional dependents has been held unconstitutional in *Frost* v. *Weinberger*, E.D. N.Y., No. 73–1383, decided May 3, 1974, appeal pending. But see *Knuckles* v. *Weinberger*, 371 F. Supp. 565 (N.D. Cal.), appeal pending (C.A. 9, No. 74–1611) (suit challenging suspension of Title II benefits without prior evidentiary hearing to recoup overpayments held not within mandamus jurisdiction); *Jamieson* v. *Weinberger*, E.D. Pa., Civ. No. 73–585, decided June 17, 1974 (same).

[10] See 42 U.S.C. 401, *et seq.* The disability insurance program

(Continued)



formation indicating that a beneficiary no longer is disabled, the beneficiary is asked by mail or telephone to verify the information that the Administration has received relating to his disability. At this time, the beneficiary is asked to furnish detailed information regarding his medical condition and work efforts. If wages have been posted to his account, he is asked to verify whether those postings in fact reflect his earnings. Should there be indications that the beneficiary's condition has improved, reports of any recent examinations are obtained from his physicians, and ordinarily he is also examined by a consultant physician. Only after it has been confirmed that a beneficiary has been working full time for a substantial period,[11] has recovered, or has refused to cooperate, will the termination of his benefits be proposed.

Preliminary decisions regarding benefit terminations are made first by the appropriate state agency and then by the Administration's Bureau of Disability Insurance, located in Baltimore, Maryland; in these proceedings the Administration's district offices act in an investigatory capacity. Under the Act, the responsibility for making the initial decision to terminate rests with the state agencies, subject to limited review at this stage by the Bureau of Disability Insurance.

(Continued)

represents only 3,485,979 beneficiaries and dependents (as of the end of fiscal 1973) out of a total of 29,966,052 Title II beneficiaries (as of April 1974). In April 1974, Title II beneficiaries received over $4 billion in benefits.

[11] The Social Security Act precludes the Secretary from finding disabled, and hence entitled to receipt of disability benefits, any individual who is able, despite an impairment, to engage in substantial gainful activity. See 42 U.S.C. 416(i)(1), 423(d); H. Rep. No. 544, 90th Cong., 1st Sess., pp. 30–31; S. Rep. No. 744, 90th Cong., 1st Sess., p 49.

The initial decision itself generally rests upon verified wage postings to the beneficiary's account over a substantial period of time or upon medical reports indicating that the beneficiary has recovered. The initial decision is not formalized, nor payment of benefits actually stopped, until after the beneficiary has been given both a summary of the evidentiary basis for the proposed termination and a reasonable opportunity to make a written rebuttal and to obtain and submit additional evidence. After making its determination to terminate benefits, the Bureau, upon the beneficiary's request, will reconsider the determination; if the beneficiary is still dissatisfied after such reconsideration, he is then entitled to an oral evidentiary hearing before a hearing examiner.[12] Return to work and medical recovery account for about 95 percent of all disability terminations.

By holding in *Goldberg* v. *Kelly, supra,* that a state could not terminate welfare benefits without providing the welfare recipient a prior oral evidentiary hearing, this Court did not purport to establish procedural requirements applicable as a matter of due process to all terminations of governmental benefits. Rather, the procedural requirements laid down were justified by reference, *inter alia,* to the types of issues and evidence typically involved in welfare termination proceedings and the consequences to the beneficiary if benefits were to be erroneously terminated. That case dealt with beneficiaries who were "'[b]y hypothesis * * * destitute, [and] without funds or assets * * *'" (397 U.S. at 261), so that "the crucial factor in this context—a factor not present in the case of * * * virtually anyone else whose governmental entitlements are ended—is that termination of aid pending resolution of a controversy over eligibility may deprive an *eligible* recipient of the very means by which to live while he waits." *Id.* at 264. While some disability benefit recipients may be needy, the hypothesis applied to welfare beneficiaries simply does not apply to disability beneficiaries as a class. The latter may have resources from pre-disability employment, their families, insurance, or other benefit programs, and, if needy, may be eligible for welfare benefits. Cf. *Arnett* v. *Kennedy,* No. 72–1118, decided April 16, 1974, slip op. 6 (Powell, J., concurring); *id.* at 31 (White J., concurring).

Moreover, state welfare termination determinations are frequently triggered by tips, rumors or gossip, so that "credibility and veracity are at issue * * * in many [welfare] termination proceedings * * *" (*Goldberg* v. *Kelly, supra,* 397 U.S. at 269), whereas disability terminations tend to be based upon "routine, standard, and unbiased medical reports," as to which the "specter of questionable credibility and veracity is not present * * *" (*Richardson* v. *Perales,* 402 U.S. 389, 404, 407), or upon comparably objective wage reports and other filings made subject to penalties for false statements. 26 U.S.C. 6674, 7204; 42 U.S.C. 408; see 18 U.S.C. 1001.

The primary purpose of the pre-termination procedural requirements of due process is to "prevent unfair and mistaken deprivations of property * * *

[12] If the initial determination of the Bureau terminating benefits is subsequently reversed and reinstatement of benefits is ordered, corrective back payments are made retroactive to the date of initial termination.

'by [providing] the kinds of "notice" and "hearing" that are aimed at establishing the validity, or at least the probable validity, of the underlying claim * * *.'" *Fuentes* v. *Shevin*, 407 U.S. 67, 97; cf. *Goldberg* v. *Kelly*, *supra*, 397 U.S. at 266–267. The risk of wrongful action, however, "must * * * be judged in the context of the issues which are to be determined * * *." *Mitchell* v. *W. T. Grant Co.*, No. 72–6160, decided May 13, 1974, slip op. 17. A prior evidentiary hearing is not necessarily required by due process where the issues "lend themselves to documentary proof" (*id.* at 9), as tends to be the case with disability terminations. The challenged procedures do not wholly deny a recipient of disability benefits notice and a hearing prior to termination. Compare *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, No. 73–157, decided May 15, 1974, slip op. 15–16. Rather, the question is whether due process is provided by procedures calling for substantial pre-termination notice and a hearing on the record, lacking only a right to oral presentation and cross-examination of witnesses.

In *Goldberg* v. *Kelly*, *supra*, the Court recognized that "[s]ummary adjudication protects the public fisc by stopping payments promptly upon discovery of reason to believe that a recipient is no longer eligible * * * [and] conserves both the fisc and administrative time and energy by reducing the number of evidentiary hearings actually held." 397 U.S. at 265. The Court held, however, "that these governmental interests are not overriding in the welfare context." *Id.* at 266.[13] But, in the context of disability terminations

[13] In *Goldberg* v. *Kelly*, the Court's conclusion that pre-termination written submissions were constitutionally inade-

(Continued)



the Court has already held that the right of cross-examination recognized in *Goldberg* v. *Kelly* need not be fully applied, in part because of the "'sheer magnitude of [the] * * * administrative burden'" on the Secretary's staff, responsible for a nationwide program, and the concomitant cost and substantial drain on the trust fund. *Richardson* v. *Perales*, *supra*, 402 U.S. at 406. We believe that similar considerations also outweigh the need to protect further the disability benefit recipient's interest in avoiding a wrongful termination by having an oral evidentiary hearing prior to termination.

## CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully submitted.

ROBERT H. BORK,
*Solicitor General.*
CARLA A. HILLS,
*Assistant Attorney General.*
GERALD P. NORTON,
*Assistant to the Solicitor General.*
STEPHEN F. EILPERIN,
JAMES C. HAIR, JR.,
*Attorneys.*

AUGUST 1974.

(Continued)

quate rested in part upon the assumption that most welfare recipients "lack the educational attainment necessary to write effectively and * * * cannot obtain professional assistance." 397 U.S. at 269. That characterization cannot automatically be applied to recipients of disability benefits.

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## APPENDIX A

United States Court of Appeals for the Fourth Circuit

No. 73–1864

GEORGE H. ELDRIDGE, APPELLEE

*v.*

CASPAR WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE, APPELLANT

Appeal from the United States District Court for the Western District of Virginia, at Abingdon. James C. Turk, District Judge

(Argued February 7, 1974; Decided: April 1, 1974)

Before BRYAN, Senior Circuit Judge, and BUTZNER, Circuit Judge

James C. Hair, Jr., Attorney, United States Department of Justice, (Irvin Jaffe, Acting Assistant Attorney General, Leigh B. Hanes, Jr., United States Attorney, and Kathryn H. Baldwin, Attorney, United States Department of Justice, on brief) for Appellant; Donald E. Earls and Carl E. McAfee (Cline, McAfee, Adkins and Gillenwater on brief) for Appellee.

*Per curiam*

Asserting that his action in terminating appellee George H. Eldridge's medical disability payments, in July 1972, without a prior *oral* evidentiary hearing,

was proper under the Social Security Administration's regulations, the Secretary of Health, Education, and Welfare now appeals the District Court's injunction of the termination.[1]

The point in this case is whether the procedure prescribed in the regulations[2]—textually followed by the Secretary—afforded the recipient Constitutional due process in allowing his disability payments to be terminated without such an ore tenus hearing as is projected in Goldberg v. Kelly, 397 UN 254, 264, 267 (1970). On the District Judge's opinion, we affirm. Eldridge v. Weinberger, 361 FS 520 (WDVa. 1973).

*Affirmed.*

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[1] 42 USC 405(a); 20 CFR 404.1 et seq.

[2] Disability Insurance State Manual, as revised February 25, 1972; and Claims Manual of the Social Security Administration.

## APPENDIX B

[Clerk's Office U.S. Dist. Court, at Abingdon, Va., filed Apr. 9, 1973, Joyce F. Wilt, Clerk, By: Linda S. Wood, Deputy Clerk]

In the United States District Court for the Western District of Virginia, Abingdon, Virginia

Civil Action No. 72-C-167-A

GEORGE H. ELDRIDGE, PLAINTIFF

*v.*

CASPER WEINBERGER, DEFENDANT

### *Opinion and Order*

By: JAMES C. TURK, *U.S. District Judge.*

This action challenges the constitutionality of the procedures employed by the Secretary of Health, Education and Welfare to terminate disability benefits. The merits of plaintiff's claim that he is disabled are not before this court since he has not exhausted his administrative remedies, but has instead chosen to challenge the procedures for terminating disability payments as being repugnant to the due process requirements of the Fourteenth Amendment of the United States Constitution. Specifically, plaintiff contends that he should have been afforded an evidentiary hearing prior to the termination of his disability benefits.

The material facts in this case have been set out in an affidavit from the Director of the Bureau of Disability Insurance of the Social Security Administra-

tion. On June 2, 1968 following the presentation of evidence before a hearing examiner, George Eldridge, plaintiff in this case, was awarded disability benefits under sections 216(i) and 223 of the Social Security Act. He was advised that the award would be reviewed in June, 1969 to determine if he was still disabled. On February 18, 1970, a determination was issued that his disability had ceased as of January, 1970 and benefits were terminated. Plaintiff requested a reconsideration on April 11 and April 23, 1970, and on August 27, 1970 filed suit in this court seeking an administrative hearing prior to the termination of benefits. This court, on June 26, 1970, ordered that payments be continued during the pendency of plaintiff's claim. Following a reconsideration determination adverse to plaintiff, a hearing was held on March 17, 1971, and a hearing examiner concluded that plaintiff's disability had not ceased prior to that date. This decision was effectuated on April 30, 1971, and this court dismissed the aforementioned suit on grounds of mootness.

Plaintiff's case was again scheduled for review the following year for possible medical improvement. On March 20, 1972 the Virginia State Agency sent a questionnaire to plaintiff concerning his continued eligibility for disability payments. He indicated that his condition had not improved and listed medical sources where he had recently received treatment. The State Agency received a medical report from plaintiff's physician on April 24, 1972 and a psychiatric consultant submitted a report on May 12, 1972. Then on May 16, 1972, the State Agency advised plaintiff that the medical evidence in his case indicated that he was able to work as of May, 1972. This notice explained the reasons for the conclusion that he was no longer disabled, advised him that a reasonable time would be



granted for him to obtain and submit additional information, and enclosed an envelope in order that additional information relevant to his claimed disability could be forwarded. Plaintiff was advised that under the Social Security Law benefits would be paid for the month in which it had been determined that he regained the ability to work plus two additional months.

On May 25, 1972 plaintiff responded to the letter from the State Agency by advising that he felt that there was already adequate evidence to prove his disability and that it should proceed to decision on the evidence. On June 12, 1972 the Bureau of Disability Insurance of the Social Security Administration approved the State Agency's findings that plaintiff's disability had ceased as of May, 1972 and that benefits would terminate after July, 1972. Plaintiff was notified of this initial determination on July 7, 1972 and advised of his right to request review by the Social Security Administration within six months of that date. Plaintiff began the present action in this court on August 3, 1972.

The procedures followed by the State Agency were set out in the Disability Insurance State Manual, the operating manual for State Agencies.[1] These policies and procedures became effective in accordance with revisions issued February 25, 1972. These procedures require notice by phone or mail to the recipient of disability benefits concerning the review of his disability. In cases in which the medical evidence conflicts with the beneficiary's assessment about the severity of his impairment, the beneficiary is given a brief

[1] The initial determination of cessation of disability is rendered by the State Agency (Vocational Rehabilitation) under an agreement with the Social Security Administration (through delegations from the Secretary) in accordance with section 221 of the Social Security Act, 42 U.S.C. § 421.

summary of the evidence justifying a proposed adverse action and at least ten days in which to respond. Additional time may also be granted in order that the beneficiary can gather and submit additional evidence. The Claims Manual of the Social Security Administration contains provisions which complement the above procedures of the Disability Insurance State Manual. There is no dispute that these procedures were fully complied with in the present case, and the only issue before this court is whether such procedures satisfy the minimum requirements of due process of law.

Plaintiff's contention that an evidentiary hearing is a constitutional prerequisite to the termination of disability benefits finds support in the companion cases of *Goldberg* v. *Kelly,* 397 U.S. 254 (1970) and *Wheeler* v. *Montgomery,* 397 U.S. 280 (1970) in which the Supreme Court held that benefits received under Title IV (Aid to Families with Dependent Children) and Title I (Old Age Assistance) of the Social Security Act cannot be suspended or terminated without first giving the recipient adequate notice and an effective opportunity to defend by confronting adverse witnesses and presenting his own evidence and arguments orally. The defendant has sought to distinguish these cases arising under Titles I and IV of the Social Security Act from those involving disability benefits under Title II of the Social Security Act.

Following the decisions in *Goldberg* and *Wheeler,* the question of whether the due process requirements in those cases were applicable to disability beneficiaries was considered by at least two courts. In *Messer* v. *Finch,* 314 F. Supp. 511 (E.D. Ky. 1970) and *Wright* v. *Finch,* 321 F. Supp. 383 (D.D.C. 1971) three judge courts considered challenges to the constitutionality of section 225 of the Social Security



Act, 42 U.S.C. § 425, which authorizes the Secretary to "suspend" payment of disability benefits if he believes on the basis of evidence submitted to him that disability may have ceased.[2] The court in *Wright* held that a recipient of disability benefits must be given adequate notice and an opportunity to participate in termination proceedings prior to suspension. The court in *Messer* reached the opposite result. The Supreme Court noted probable jurisdiction in *Wright,* but because the Secretary had promulgated new regulations to be followed by the Social Security Administration in determining whether to suspend or terminate benefits the court felt it appropriate to withhold a decision on the merits until the cases had been considered by lower courts under the new regulations. Accordingly, the decision of the three judge court in *Wright* was vacated and the case was remanded to the Secretary. *Richardson* v. *Wright,* 405 U.S. 208 (1972).

The new regulations referred to by the Supreme Court in *Wright* are those discussed, *supra,* that were applied to the termination of plaintiff's disability benefits in this case, and the question of whether these termination procedures meet the constitutional requirements of due process is squarely before this court.

In deciding whether the requirements of due process have been satisfied in this case, it is important to first recognize that due process safeguards vary with

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[2] These cases involved the "suspension" of benefits under the statute, 42 U.S.C. § 425, whereas in the case before this court an initial decision was made to terminate plaintiff's benefits. Hence plaintiff is not challenging the constitutionality of the statute but the procedures set forth in the regulations for determining that his disability has terminated. 20 C.F.R. § 404.905(d).

the rights sought to be protected. In *Cafeteria Workers* v. *McElroy,* 367 U.S. 886, 895 (1961) the Supreme Court stated:

> (t)he very nature of due process negates any concept of inflexibile procedures universally applicable to every imaginable situation * * * what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by government action.

The court in *Goldberg* presented the issue in a similar manner as follows:

> The extent to which procedural due process must be afforded to the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss." *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 168 (1951) (Frankfurter, J. concurring), and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. 397 U.S. 254 at 262–263 (1970).

In balancing the government interest against the private interest in this case, the defendant has sought to distinguish the welfare recipient in *Goldberg* from the disability recipient in the present case on a number of grounds. It is argued that in the case of welfare recipients "need" was the legal criterion for benefits and "termination of aid pending resolution of a controversy may deprive an eligible recipient of the very means by which to live while he waits." 397 U.S. at 263. By contrast, according to the Secretary, the legal criterion for Title II disability benefits is whether the beneficiary continues to be "unable to engage in substantial gainful activity," 42 U.S.C. 423



(d)(1), which obtains irrespective of need. This distinction is not persuasive for purposes of due process. Although disability beneficiaries are not by definition dependent on benefit payments for their livelihood, they are by definition unable to engage in substantial gainful activity, and to cut off payments erroneously may create a loss as "grievous" as that which concerned the Supreme Court in the cases of welfare and old age beneficiaries.

In any case, in the recent case of *Fuentes* v. *Shevin,* 407 U.S. 67 (1972) the Supreme Court specifically rejected a narrow reading of *Goldberg* that would limit the due process requirement of a prior hearing to cases involving necessities. *Fuentes* involved a challenge to Florida and Pennsylvania statutes which provided for the issuance of writs ordering state agents to seize a person's possessions simply upon an *ex parte* application of any other person who claimed a right to the goods and posted a security bond. In the earlier case of *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337 (1969) the court had held that a Wisconsin statutory scheme which permitted the freezing of ½ of the wages due an employee without notice or a prior hearing violated procedural due process. In *Fuentes* it was argued that *Sniadach* and *Goldberg* should be narrowly read as limited to cases involving absolute necessities. In rejecting a narrow reading of those cases the court stated:

> Both decisions were in the mainstream of past cases, having little or nothing to do with the absolute "necessities" of life but establishing that due process requires an opportunity for a hearing before a deprivation of property takes effect. * * * While *Sniadach* and *Goldberg* emphasized the special importance of wages and welfare benefits, they did not convert that

> emphasis into a new and more limited constitutional doctrine.
>
> Nor did they carve out a rule of "necessity" for the sort nonfinal deprivations of property that they involved. 407 U.S. at 88, 89.

The court in *Fuentes* also made reference to the case of *Bell* v. *Burson,* 402 U.S. 535 (1971) in which the court had held that there must be an opportunity for a hearing on the issue of fault before the license of an uninsured motorist could be suspended. The court in *Fuentes* noted that the drivers license involved in *Bell* did not rise to the level of a "necessity" as in the cases of wages or welfare benefits but was nevertheless an important interest entitled to the protection of procedural due process. From the above case it is thus apparent that *Goldberg* is not distinguishable from the case at bar in terms of the criterion for benefits.

Defendant next argues that the nature of the evidence involved in the case of a disability recipient ("medical reports of highly probative value") justifies a different due process standard than in the case of welfare recipients where "rumor and gossip" are more likely to form the basis of an adverse decision. This argument has been somewhat refuted by the history of this case. Plaintiff was denied disability benefits on the basis of his written application and medical reports on two different occasions, but in both cases prevailed after being afforded an evidentiary hearing before a hearing examiner. It is true that the court in *Goldberg* stated that "(p)articularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision." 397 U.S. at 269. But the court also characterized the pretermination hearing as important "where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on the



misapplication of rules or policies to the facts of particular cases." 397 U.S. at 268. There is no doubt that medical evidence may be conflicting, *Richardson* v. *Perales,* 402 U.S. 389 (1971), and the Secretary must exercise judgment in resolving the conflicting medical evidence. 20 C.F.R. § 404.1526. Thus there will be a resolution of factual issues in disability cases, and the exercise of subjective judgment to resolve conflicting evidence of a factual nature makes the value of a hearing self evident. But in addition, it is noteworthy that determinations of total disability are not exclusively a function of medical evidence. The four elements of proof required for the establishment of a disability claim were set forth in *Underwood* v. *Ribicoff,* 298 F. 2d 850, 851 (4th Cir. 1962) as follows:

> (1) the objective medical facts;
>
> (2) the diagnoses of treating and examining physicians on subsidiary questions of fact;
>
> (3) the subjective evidence of pain and disability testified to by claimant and corroborated by his wife and neighbors; and
>
> (4) claimant's educational background, work history and present age.

There is no requirement that a disability under the Social Security Act be proven by "objective" medical evidence. *Flake* v. *Gardner,* 399 F. 2d 532, 540 (9th Cir. 1968); *Whitt* v. *Gardner,* 389 F. 2d 906, 909 (6th Cir. 1968). The testimony of the claimant or witnesses in his behalf may be crucial in establishing a disability.[3] See, *Page* v. *Celebrezze,* 311 F. 2d 757 (5th Cir. 1963).

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[3] For a discussion of the value of oral testimony and vigorous advocacy in disability cases and the somewhat vulnerable status of medical reports in such cases see, Haveland & Glomb, *The Disability Insurance Benefits Program and Low Income Claimants in Appalachia*, 73 W. Va. L. Rev. 109, 117–137 (1971).

Also of relevance to the Secretary's argument that disability cases are distinguishable from welfare cases because of the nature of the evidence involved in the case of *Fuentes* v. *Shevin, supra.* In response to the contention that defendants could repossess goods without first affording plaintiffs a hearing in the case of a default in payments on a conditional sales contract the court stated:

> The right to be heard does not depend on an advance showing that one will surely prevail at the hearing. "To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits." *Coe* v. *Armour Fertilizer Works,* 237 U.S. 413, 424. It is enough to invoke the procedural safeguards of the Fourteenth Amendment that a significant property interest is at stake. * * * 407 U.S. at 87.

The court also stated:

> The issues decisive of the ultimate right of continued possession, of course, may be quite simple. The simplicity of the issue might be relevant to the formality or scheduling of a prior hearing. See, *Lindsey* v. *Normet,* 405 U.S. at 65. *But it certainly cannot undercut the right to a prior hearing of some kind.* 407 U.S. at 87 Fn. 18. (Emphasis added).

The Secretary's final argument in support of his position that a pre-termination hearing should not be required for disability recipients is that to require such hearings would result in vast disruption of the Social Security System. The Secretary has submitted evidence to show that to require pretermination hearings would cause administrative inefficiency and result in substantial cost. The same arguments were made in



*Goldberg,* but the court there held that the State's concern in preventing an increase in its fiscal and administrative burden was outweighed by the interests of welfare recipients in receiving payments and the State's interest that the payments not be erroneously terminated. The court recognized that some greater expense would be involved but felt that this could be reduced "by developing procedures for prompt pre-termination hearings and by skillful use of personnel and facilities." 297 U.S. at 266.

The Secretary asserts that under the present procedures the determination to cease paying disability benefits is made initially by the State Agency after the Social Security Administration has conducted its investigation, and then by the Administration's Bureau of Disability Insurance on review, and this system could not accommodate a requirement of a pre-termination hearing. According to the Secretary, a pre-termination hearing would require that the beneficiary be allowed to participate in either the State Agency determination proceedings or the decision of the Bureau of Disability Insurance which is located in Baltimore. The Secretary asserts that this would require either that the beneficiary travel great distances or that federal officials travel to the area in which the beneficiary resides. Furthermore, to turn the decision-making function over to the Social Security Administration's local offices would require staffing these offices with individuals qualified to make vocational and medical judgments, would entail the duplication of personnel already staffing State Agencies and would make uniformity and consistency in the administration of the program all but impossible. Hence, the Secretary concludes that the burden of a prior hearing is so great as not to be justified. This argument has been effectively met by Justice Brennan in his dissent

from the refusal of the court to reach the merits of the case in *Richardson* v. *Wright,* 405 U.S. 208, 223 (1970). He there points out that there are currently post-termination hearing procedures provided, 20 C.F.R. §§ 404.917–941, and the Secretary could comply with the requirement for pre-termination hearings by merely changing the timing of the hearings. This was done in the case of welfare recipient after *Goldberg,* and there has been no showing that it could not be done here.

The Secretary initially asserted that a requirement of pretermination hearings would result in losses of $16 million to the Social Security Trust Fund, but in a supplemental brief and affidavit this figure was increased to $45 million. The Secretary arrives at this figure by noting that in 1972 there were 39,078 cases in which an initial determination of cessation of disability were rendered and that the average monthly benefit in those cases was $325. The average cost of a hearing is estimated to be $400, and this cost is estimated to increase by 30% if hearings were held in every case due to the need for increased staff and available facilities. From these figures the Secretary argues that to provide prior hearings which would result in a delay in termination of benefits of 2 months would cost $45 million.

As was pointed out by Justice Brennan in *Richardson* v. *Wright, supra* at 223–226 this figure is grossly inflated. He there noted that the Secretary has assumed that all beneficiaries will demand a prior hearing. The Secretary's own figures show that of the 39,078 cases in which determinations of cessation of disability were rendered in 1972 only 2,801 post-termination hearings were held. It is certainly possible that even a smaller percentage of disability beneficiaries would demand pre-termination hearings due



to the fact that the new regulations provide for notice and an opportunity to respond in writing before termination.

Justice Brennan also noted that the Secretary assumes that all of those demanding hearings will lose, and that the Secretary will be unable to recover any of the benefits paid to beneficiaries pending the hearing. Both of these assumptions are unwarranted. Not only do a substantial number of persons demanding a hearing prevail, but the Secretary is directed to require a refund from the beneficiary or decrease future benefits in the case of an overpayment. 20 C.F.R. §§ 404.501–404.502. The Secretary also assumes that a pre-termination hearing would entail a two-month delay in the termination of disability benefits. But under current procedures benefits are paid for two months after a disability ceases, and it is hard to believe that it would take an additional two months (four months after an initial determination that disability had ceased) to have a hearing.

Finally, it can be noted that the Secretary has not taken into account the cost of present procedures which should be offset against the cost of new procedures. In short, the assumptions and omissions in the Secretary's analysis of the cost of requiring pre-termination hearings in disability cases make the $45 million figure almost meaningless. It is perhaps true that some additional cost will be entailed by the government in providing pre-termination hearing to those disability recipients who request it, but it does not appear that the government's interest in minimizing costs and maximizing administrative efficiency are of such overwhelming significance in this case as to outweigh the needs of the individual not to be erroneously found to be able to engage in substantial gainful activity.

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What the Supreme Court said in a related area is worth repeating here in light of the Secretary's argument.

> A prior hearing always imposes some cost in time, effort, and expense, and it is often more efficient to dispense with the opportunity for such a hearing. But these rather ordinary costs cannot outweigh the constitutional right. See *Bell* v. *Burson, supra,* at 540–541; *Goldberg* v. *Kelly, supra,* at 261. Procedural due process is not intended to promote efficiency or accommodate all possible interests, it is intended to protect the particular interests of the person whose possessions are about to be taken.
>
> "The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones." *Stanley* v. *Illinois,* 405 U.S. 645, 656. *Fuentes* v. *Shevin, supra,* at 90 Fn. 22.

In *Bell* v. *Burson, supra,* at 540–541, the court rejected the argument that the additional cost of an expanded hearing was sufficient to forego a hearing as to fault prior to the revocation of a drivers license. The court there stated:

> It is fundamental that except in emergency situations (and this is not one) due process requires that when a State seeks to terminate an interest such as that here involved, it must afford "notice and opportunity for hearing appropriate to the nature of the case" *before* the termination becomes effective. 402 U.S. at 542.



In *Fuentes supra* at 90–91, the court stated:

> There are "extraordinary situations" that justify postponing notice and opportunity for a hearing. *Boddie* v. *Connecticut,* 401 U.S. at 379. These situations, however, must be truly unusual. Only in a few limited situations has this court allowed outright seizure without an opportunity for a prior hearing.

It is the opinion of this court that the defendant has not demonstrated that the termination of disability payments is such an "extraordinary situation" that the basic notions of fairness encompassed in the due process clause should be excepted in this case. As has been previously noted the Supreme Court has required a prior hearing in cases of drivers license revocation, the repossession of goods under a conditional sales contract, the garnishment of wages, and the termination of benefits under Title I and IV of the Social Security Act. In addition, the requirements of a prior hearing have been held applicable to cases of public housing tenancy being terminated. *Escalera* v. *New York Housing Authority,* 425 F. 2d 853 (2d Cir.), *cert. denied,* 400 U.S. 853 (1970); *Caulder* v. *Durham Housing Authority,* 433 F. 2d 998 (4th Cir. 1970), *cert. denied,* 401 U.S. 1003 (1971).

In light of prior hearing being required in cases of interests which are seemingly less substantial than receiving disability benefits this court can find no basis for considering disability payments such an unusual situation as to require a less due process standard.

For the aforementioned reasons and authority it is the conclusion of this court that the plaintiff in this case, as the recipient of benefits under Title II of the

Social Security Act, must be afforded a hearing in the nature of that required for welfare beneficiaries under Title IV of the Social Security Act prior to the termination of his benefits.

The Secretary's motion to dismiss is denied and the case is remanded to the Secretary for the payment of disability benefits and for further proceedings not inconsistent with this opinion.

Enter: This 6th day of April, 1973.

JAMES C. TURK,
*U.S. District Judge.*

A true copy.
Teste:

JOYCE F. WITT, *Clerk.*
By: LINDA S. WOOD, *Deputy Clerk.*

## APPENDIX C

### PREFACE (Continued)

#### ABBREVIATIONS COMMONLY USED IN SSA CASE FILES

The following abbreviations are explained here because they appear frequently in SSA disability case files.

AC—Appeals Council
AN—Social Security Account Number
APTD—Aid to the Permanently and Totally Disabled
AQD—Alleged Quarter Disability Began
AYD—Alleged Year Disability Began
BDI—Bureau of Disability Insurance
BDPA—Bureau of Data Processing and Accounts
BHA—Bureau of Hearings and Appeals
BRSI—Bureau of Retirement and Survivors Insurance
CDB—Childhood Disability enefits
CM—Claims Manual (SSA operating instructions for field staff)
DBS—Division of Benefit Services, BDI
DHEW—Department of Health, Education, and Welfare
DIB—Disability Insurance Benefits
DIL—Disability Insurance Letter
DISM—Disability Insurance State Manual
DO—District Office, SSA
EQD—Established Quarter Disability Began
E/R—Earnings Record

HE—Hearings Examiner
OAIB—Old-Age Insurance Benefit on Beneficiary
OASDHI—Old-Age, Survivors, Disability and Health Insurance (Program)
PC—Payment Center (SSA benefits payment center)
PIA—Primary Insurance Amount
QC—Quarter of Coverage
RC—Report of Contact (Form OAC–5002)
RO—Regional Office (Social Security Administration, DHEW)
RRB—Railroad Retirement Board
RRDI—Regional Representative, Disability Insurance
SA—State Agency (under agreement to make disability determinations pursuant to § 221 of the SSA)
SE—Self Employment
SEI—Self-Employment Income
SGA—Substantial Gainful Activity
SSA—Social Security Administration or Social Security Act
SSR—Social Security Ruling
VA—Veterans Administration
VR—Vocational Rehabilitation
VRA—Vocation Rehabilitation Administration
WE—Wage Earner

*350.—The Administration's Objective—In General*

Most people who get a social security check depend on it for the necessities of life. Therefore, one of the principal goals of the Administration is to see that disability beneficiaries get their checks every month at the time they expect them, and that the *right check continues to be sent to the right person, at the right*



*address, on time as long as he continues to be eligible for such benefits.*

Assurance that the eligibility requirements of the law continue to be met is implicit in the goals of correct and timely payments. When payment is not due, it must be stopped as promptly as practicable, but care must be exercised to stop payment only when (and in the manner) authorized by applicable law, regulations and administrative instructions and the general requirements of "due process". Hence, it is incumbent on all components of the Administration to see that the beneficiary (or his representative payee) receives meaningful predetermination notice of any possible adverse action, the basis for the proposed action, and an opportunity to rebut the facts on which the proposed action is predicated. Of course, after a formal determination is effectuated, he must (1) be given written notice of the determination (including rationale) and (2) be informed of his rights to relief and appeal under the law. Under SA agreements, BDI notifies the beneficiary of the formal determination made on the issue of initial and continuing entitlement. However, the role of the district office, SA's and BDI is to assure that the beneficiary is afforded "due process" prior to check-stoppage (i.e., suspension of benefit payment. see § 265.1ff). Also see § 353.6 for SA's role in situations involving proposed medical recovery cessation cases.

Maintaining the desired standard of excellence presents a continuing challenge. The number of actions which must be taken each year in the Bureau of Disability Insurance to start, stop, or change the benefit amount or address on checks runs into several hundred thousand. Notwithstanding the large number of disability beneficiaries who are served, we cannot afford to lose sight of the fact that (1) each one

merits our concern and expert help and (2) his social security payment is most likely a very important consideration in the pattern of his life. He has a right to expect courteous, prompt, and correct handling of his case irrespective of whether we are paying, suspending, terminating or reinstating benefits.

*351.—Factors Affecting Continuance of Eligibility and Receipt of Benefits*

A. *Disability Insurance and Childhood Disability Beneficiaries.*—There are two primary reasons for finding cessation of disability in DIB and CDB cases: (1) the impairment has improved since the previous initial or continuing determination to the point where it is no longer of such severity as to prevent the beneficiary from engaging any substantial gainful activity; or (2) the beneficiary has demonstrated by work activity (with due consideration to the trial work period provisions when applicable) that despite his impairment, he has regained his ability to engage in substantial gainful activity.

B. *Disabled Widow (or Widower) Benefits.*—For a beneficiary entitled to DWB, cessation of disability will be found when such person's impairment improves to the point where it no longer meets or equals the level of severity described in the Listing of Impairments or when the individual engages in SGA. The trial work period provisions do not apply to disabled widows or widowers.

C. *How CD Issues Arise.*—Cases which generally require continuing disability determinations arise from (1) voluntary reports from beneficiaries of medical improvement or return to work, (2) earnings posted to the individual's social security record, (3) medical re-examination diaries established for the conditions described in § 348.1B (or re-established per



§ 349.1), (4) reports of release from a mental or TB hospital, (5) reports of successful rehabilitation, and (6) random spot checks. The following sections provide instructions for handling cases where a continuing disability issue has arisen on the basis of one or more of these considerations, requiring a determination as to whether disability continues.

*352.—Work Activity—Development of Evidence*

A. *BDI Development Procedures.*—1. *Direct Mail Contact with Beneficiary.*—Continuing disability cases involving work activity are identified by BDI and developed directly with the beneficiary (or payee) by means of a letter—questionnaire. (See "2" below for exclusions that are to be developed by personal interview in the district office.) BDI mails Form SSA–821(a)—"Report of Work Activity—Continuing Disability" (See Exhibit #3a) to the beneficiary for completion and includes a postage-free envelope preaddressed to BDI for returning the form. This form alerts the beneficiary to the fact that the information submitted will be used to verify his continuing entitlement and, if it is determined that he is no longer entitled, benefits will cease.

The questions solicit data regarding (1) wage postings, (2) work activity, (3) current medical restrictions, and (4) VR services, if any; also the beneficiary is invited to submit additional information that he believes is important, and will assist in the review of his continuing entitlement. Where benefits should be suspended, such action will not be taken until the beneficiary has been notified of the proposed suspension and the information and evidence upon which it is based and given an opportunity to submit rebuttal information and evidence (see B2 below).

This development technique is utilized by BDI to secure documentation in all instances where a TWP diary date matures, unexplained postings are reported to a beneficiary's earnings record, the beneficiary voluntarily reports a return to work and is not entitled to a TWP (or previously completed it), a notice is received that the beneficiary has successfully completed a VR training program, and in all other situations not listed as an exclusion in "2" below.

2. *Exclusions from BDI Direct-Mail Procedure.*—Because of special development requirements, the following categories of cases will be developed by the DO through a personal interview with the beneficiary and then sent directly to the SA if an issue is present (see "B" below). When these cases are received in the SA all conflicts should have been resolved; if not, the SA may develop as necessary or the file may be returned to the DO, as appropriate.

(a) Self-employment work activity cases
(b) Agricultural employment cases
(c) Voluntary report of work activity with a future (or outstanding) medical reexamination date

3. *BDI Review.*—BDI receives and reviews the beneficiary's responses to the direct mail contact with the beneficiary to determine whether an issue of continuing disability is actually present. Cases in which (1) the beneficiary is entitled to *additional* months of a trial work period, or (2) posted or reported earnings are determined *not* to represent work, or (3) actual earnings are clearly below the SGA level, etc., are disposed of as "No Issue" cases, and as such, are not sent to the SA. Cases where an issue *is* present are sent by BDI directly to the SA for adjudication. Where the beneficiary does not respond or where his response is inadequate or creates a complex issue or



a material conflict exists, (see 4 below), BDI requests assistance from District Offices.

4. *Evidence Conflicts with Beneficiary's Allegation.*—Where the evidence indicates the beneficiary is engaging in substantial gainful activity and such evidence conflicts *in any way* with the beneficiary's assessment about (1) his work activity, (2) the proposed date of cessation, or (3) his entitlement to a TWP, the beneficiary will be contacted by the DO to clarify any factual differences or misunderstanding before the folder is forwarded to the SA for a determination of cessation.

A conflict arises when the beneficiary's answers, e.g., on the SSA–821(a), the SSA–821, or subsequent development, are in conflict with the tentative conclusion reached by BDI or the DO that a cessation is justified based on other evidence of record. Some examples of such a conflict are: (1) beneficiary makes a statement that he is *not* engaging in SGA in spite of actual earnings clearly above SGA level, or (2) there is *any* material conflict between the evidence and the beneficiary's allegation as to amount of earnings, value of subsidy, length of work effort, date when work became SGA, entitlement to TWP, etc. (see § 330ff).

B. *District Office Responsibilities—Work Activity*—1. *General*—When the direct mail procedure is ineffective, BDI requests DO assistance. Also, the beneficiary may personally contact the DO since Form SSA–821 (a) contains the statement . . . "If you have any questions or need help in filling out this form, please telephone or visit any social security office." In addition, a beneficiary may inform a DO of a work event which requires a continuing disability investigation. In these instances the DO will (1) provide whatever assistance is needed, (2) develop pertinent facts di-

rectly with the beneficiary or payee, and (3) secure necessary documentation. Whenever a conflict arises (see "A4" above), the DO will resolve the conflict by a personal interview with the beneficiary whenever possible, and where necessary, obtain needed documentation, such as, a breakdown of wages from an employer. Whenever the evidence supports a suspension or cessation of benefits, the beneficiary will be (1) informed of the proposed action, (2) advised of the evidence on which such action is based, and (3) given an opportunity to submit rebuttal evidence. When the DO concludes that the beneficiary's employment demonstrates an ability to engage in SGA, the file will be documented accordingly and forwarded to the SA (see 2 below for processing before DO suspension action is taken). However, if it is clear that an issue of continuing disability is not present (and in all cases where the folder is in BDI), the DO forwards all material to BDI.

2. *DO Review Before Suspension Action is Processed.*—When the DO concludes that the beneficiary's employment demonstrates an ability to engage in SGA *and* either (1) benefits have already been overpaid or (2) an overpayment is imminent, the DO will immediately contact (or recontact) the beneficiary. The purpose of this contact is to (1) inform him of the reasons for the DO requesting that his benefits be suspended and to give him an opportunity to submit rebuttal evidence. The offer of the opportunity to submit rebuttal evidence should be documented in the file. The DO will consider any additional statement or evidence submitted in deciding wheher the request to suspend benefits is warranted. When this has been done, and a termination action is still supported, the DO will send the folder to the SA and request BDI to suspend benefits. (If the folder is not in the DO,



the DO will forward the evidence with a request for suspension to BDI for association with the folder. BDI will then send the folder to the SA for adjudication.)

C. *State Agency Responsibility.*—The completed Form SSA–821(a) and other information submitted by the beneficiary is associated with the case folder and sent by BDI (and in some instances by the DO) to the SA. The evidence submitted should ordinarily be sufficient to permit a determination as to continuing entitlement.

Where the SA finds the total CD evidence is not adequate for adjudicative purposes (see § 352.1ff), the SA may develop as necessary or may refer the case to the DO for any assistance, as appropriate. Requests for district office assistance should be precise and specify what information is needed by the SA for adjudication. Where the SA contact with the beneficiary is by telephone, the information received should be recorded on an SSA–5002 (Report of Contact) and annotated to show that the information resulted from a telephone contact. The name of the person providing the information should always be recorded on the form and confirmation secured when appropriate (see § 353.4C).

Before a final determination is made, the SA should assure itself (1) that it is in possession of all pertinent evidence of record, (2) that the evidence in file is of sufficient probative value to permit a sound determination, (3) that in work cessations (see 353ff for cessation based on medical recovery) the beneficiary has had the opportunityto present whatever evidence he felt was pertinent to the DO, to BDI, or to the SA, and (4) that in cases where there was a conflict between the evidence supporting the cessation and the beneficiary's statements, that the folder is adequately

documented with regard to the DO's effort to rectify the conflict of facts or understanding. When the determination is made, it should be forwarded with the folder to BDI.

*352.1 Work Activity—Trial Work Period*

The law provides a trial work period without loss of benefits for persons determined to be under a disability and thus entitled to DIB or CDB. The individual who is still severely impaired may render "services" in as many as 9 calendar months (not necessarily consecutive) during which his work, regardless of the magnitude, will not be the sole consideration in determining whether disability has ceased. Not until after 9 months of services will his work be considered in determining whether he has demonstrated an ability to engage in SGA, if in the meantime his condition has not improved. After the end of the trial work period, any work (including the services rendered during any of the 9 months) may be considered in determining whether he is able to engage in SGA in any month thereafter.

A. *Investigation Before End of the Trial Work Period.*—If the medical evidence upon which the initial allowance or continuance is based indicates some likelihood of recovery from the impairment (i.e., a medical reexamination diary has been established), a return to work before the month the diary falls due will be considered as a possible indication of medical recovery (§ 353.2A). Under these circumstances BDI will send the case to the DO for an interview with the beneficiary. Subsequently, the case will be forwarded to the SA for a determination of continuance or cessation.

If it cannot reasonably be determined from the medical evidence in file and the DO interview whether the beneficiary is still disabled, the SA will develop



the medical aspects. If the evidence reveals the individual has recovered from his impairment, cessation will be found with the month established by current medical evidence (see § 353.2). Retroactive cessation to the month work began should not be found unless the facts (medical and work) clearly demonstrate the propriety of such action.

If the medical evidence obtained reveals the individual is still disabled, a continuance will be prepared and his case will not be investigated again until he has worked in 9 months, or when a subsequent medical reexamination diary matures, or affirmative evidence of medical recovery is received, whichever date is earliest.

Affirmative evidence of medical recovery may include a report from a physician, hospital, clinic, etc., indicating recovery or a clear statement from a competent individual that he has recovered or improved which there is no reason to question or doubt.

B. *Investigation After End of Trial Work Period.*—Most disability beneficiaries have impairments which, by their nature, are either static or progressive. Since medical recovery is not expected, a return to work under these circumstances is not considered as an indication of the possibility of medical recovery. An investigation in this type of case will not be started until the individual has worked in at least 9 months or affirmative evidence of medical recovery is received before 9 months of services have been rendered.

*352.2 Trial Work Period—Definition of Services*

A. *General.*—The term "services" means activity in employment or self-employment which is performed for remuneration or gain or is determined to be of a type normally performed for remuneration or gain.

Since the trial work provision is intended to give a disabled beneficiary the opportunity to test his ability to work and hold a job, minor work activity may generally be disregarded. Therefore, work activity in *employment* in a month will constitute "services" only if it is actually or usually performed for remuneration or gain amounting to more than $50, either in cash or in kind. Work activity in *self-employment* will be determined to be "services" only where net earnings in a calendar month are more than $50 for a month or the self-employed person spends more than 15 hours in that month in the work activity.

In some SE cases it may not be possible to isolate from the total net earnings the net earnings for each particular month or self-employment. When this occurs after full development divide the net earnings for the particular work period by the months of self-employment to find net earnings per month. Cases where remuneration for employment is in the form of commissions should be handled in a similar manner.

B. *Activity Which Does Not Constitute "Services" for Purpose of Charging Trial Work Period Months.*—Activity performed by a beneficiary for which payment *in excess* of $50 a month is made does not constitute "services", if the activity, although, resembling services in employment for remuneration or gain, is:

(1) part of a prescribed program of medical therapy; and

(2) carried out in a hospital under the supervision of medical and administrative staff; and

(3) is not performed in an employer-employee relationship; and

(4) is not normally performed for remuneration or gain.



See SSR 69–46 for a case illustrating activity performed under these circumstances. When appropriate, the DO will develop the question of employer-employee relationship and prepare a special determination as to the existence of an employer-employee relationship.

*352.3 When the Trial Work Period Does Not Apply*

A. *Freeze Cases.*—A person entitled to a freeze only is not entitled to a trial work period. Examples of freeze only cases are:

1. Individual is entitled to a freeze only because of railroad or military service credits that may be used toward a freeze but not toward entitlement to DIB.

2. Individual is statutorily blind but is not entitled to a disability insurance benefit.

3. Where an individual in freeze status fails to file for DIB for some other reason.

B. *Only One Trial Work Period During a Period of Disability.*—An individual will not be entitled to more than one trial work period within the same disability period.

C. *Subsequent Period of Disability.*—If an individual's subsequent period of disability begins within 5 years after the termination of an earlier freeze or DIB, he may become entitled to DIB without serving a waiting period. In such cases, the trial work period provision does not apply.

*Exception:* There are cases, however, where a claimant becomes reentitled within 5 years after a prior cessation but he is not paid for the full number of months he is disabled. This can occur where the subsequent application is not filed until 18 or more months after the onset of the subsequent disability; since benefits can be paid retroactively for only 12 months, a beneficiary in this situation will have a period of 6 or more months after onset in which he does not receive

556-468 O - 74 - 4

benefits. Where a beneficiary does actually serve a waiting period, he is entitled to a trial work period.

Note: Even though a child in CDB status does not serve a waiting period and does not have a period of disability established, he is entitled to a trial work period if it is found he still has a severe impairment when he returns to work. If a CDB later becomes simultaneously entitled to DIB on his own account number, or his CDB is terminated and he later becomes entitled to DIB on his own account number, he must serve a 6-month waiting period before he can receive DIB. He is, therefore, entitled to a trial work period as a DIB (irrespective of whether he worked in a trial work period as a CDB). This remains true even if his period of disability and his entitlement to DIB occur within 5 years of his termination of CDB (no period of disability).

*352.4 When the Trial Work Period Begins*

The trial work period begins with the month in which the beneficiary has filed an application and becomes entitled to DIB or, in the case of a disabled child beneficiary who has attained the age of 18, with the month in which he attains age 18 or the month in which he becomes entitled to such benefits, whichever is later. The months of trial work (whether or not such months are consecutive) will be counted beginning with the first month within the trial work period in which a beneficiary, who is determined to still have a severe impairment, performs services.

*Example 1:* Beneficiary became entitled 11/66 by an application filed 11/66 and begins work 3/67. The trial work period begins 11/66 and counting of trial work months begins 3/67.

*Example 2:* Beneficiary became entitled 2/66 by an application filed 2/66; his onset date is 7/15/65 and he



begins work 12/65 (during the waiting period); work during the waiting period was determined to be not SGA. Trial work period and counting of months of trial work begin 2/66.

*352.5 When the Trial Work Period Ends*

The trial work period ends with the ninth month in which the beneficiary has worked in the trial work period or when his disability is determined to have ceased for reasons other than work (e.g., medical recovery), whichever is earlier. Therefore, the fact that most individuals are entitled to a trial work period beginning with the first month of entitlement does not mean that they are automatically entitled to 9 months of trial work.

*Example 1:* Beneficiary entitled 7/66 by an application filed 7/66 (no medical reexamination established); begins trial work in 1/67 and continues in all succeeding months. Trial work period ends with 9/67.

*Example 2:* Beneficiary entitled 7/66 by an application filed 7/66 (no medical reexamination established); begins trial work in 6/68. In 9/68 he submits a medical report from his attending physician indicating recovery (i.e., affirmative evidence). Based on further development, medical recovery, cessation is found 10/68. The trial work period ends with 10/68.

*Example 3:* Beneficiary entitled 7/66 by an application filed 7/66 (medical reexamination established for 6/67); begins trial work in 1/67. Evidence shows medical recovery in 1/67. Disability ceases and the trial work period ends with 1/67.

*352.6 Evaluation of Work Activity After Trial Work Period*

After an individual's trial work period has ended, the SA in determining whether his disability has ceased will review all medical and nonmedical factors,

including the claimant's work before, during, and after the trial work period. DISM 330ff contains guides for evaluating work activity.

When cessation of disability is found because the individual has demonstrated by working that he is able to engage in SGA, cessation may be established as of any month, after the end of the trial work period, in which the individual is determined able to engage in SGA. This may be the first month after the last month of work in the trial work period or any subsequent month, depending on the facts in the case. It is not necessary for the individual to still be working in the month of cessation. For example, if the SA receives a case in the ninth month of work which shows that the individual stopped working in the ninth month, cessation may be found the tenth month.

If the SA finds that the work is not SGA and the individual has an impairment which could reasonably be expected to improve, medical development should be undertaken to resolve the issue of medical recovery.

If the SA determines that a continuance is proper at the time of adjudication but that the work may become SGA at some point in the future, indicate in capital letters in Item 12 of the SSA–833, after the words "Evidence and Reasoning," "POSSIBLE FUTURE SGA CASE," so that BDI can establish proper controls on the case.

*353.—Medical Recovery*

*353.1 General*

A determination that disability has ceased will be made where the medical and vocational evidence establishes a capacity for substantial gainful activity, whether or not the beneficiary returns to work.



Issues of medical recovery generally arise in cases which have been scheduled for medical reexamination in accordance with § 347ff. When the reexamination date is reached, a continuing disability investigation will usually be initiated. The following sections govern the development and adjudication of continuing disability cases involving issues of medical recovery.

*353.2 Possible Medical Recovery—Return to Work*

A. *General.*—If a beneficiary's impairment might reasonably have been expected to improve (i.e., a medical reexamination diary was correctly established in accordance with §§ 348.1 or 349.1), a subsequent return to work before the month of the scheduled medical reexamination is considered as a possible indication of medical recovery and the case is sent to the DO for development. Upon completion of the DO development, the case is sent to the SA. The SA must carefully consider the development already undertaken to determine whether further medical documentation is needed and, if so, the type and extent necessary for a sound determination of continuance or cessation.

*§ 353.2B—cross-refer to § 353.6*

B. *Clear-Cut Cessation (Medical).*—In certain clear-cut cases, cessation may be found without current medical development on the basis of medical recovery as of the first month of return to full-time work with no significant medical restrictions. Where there is no evidence to the contrary, the evidence of record regarding the anticipated medical recovery may reasonably support a finding that the return to full-time work with no significant medical restrictions was occasioned by sufficient medical improvement (i.e., that the individual, by returning to full-time work has

clearly demonstrated that he has recovered to the extent that he has regained the ability to engage in SGA).

*Example:* The evidence obtained during the initial case processing revealed that the individual had an impairment with marked functional restrictions which was expected to continue for more than 12 months but that recovery was expected 18 months after onset and a medical reexamination was established accordingly. Upon notice by the beneficiary that he returned to work, a CDI was initiated. The district office CDI interview disclosed that 16 months after onset the beneficiary returned to full-time work earning $400 a month. He stated that his doctor said he could return to work and did not impose any medical restrictions. Cessation for medical improvement, without additional development, should be found in the 16th month after onset. (On Form SSA–833, Determination of "Cessation or Continuance of Disability", Item 11B, should be checked. In Item 12, Evidence and Reasoning, the finding of cessation should be based on medical recovery and not on the services rendered during the trial work period, which under the law may not be used as the sole basis for termination until the trial work period is completed.)

C. *Evidence of Record Inconclusive.*—In all cases where the evidence in the record is inconclusive (e.g., working part-time, allegations of continued disability or work contrary to medical advice), current medical development should be undertaken to resolve the issue of medical recovery (see § 353.4). For example, had the individual described in the example above returned to part-time work, current medical development would have to be undertaken because it is not clear he has fully recovered.



D. *Continuance.*—If it is found that the individual is working despite a continued severe impairment and such work is within the trial work period, a finding of continuance should be made. In no instance should the work by itself be considered a basis for cessation until the expiration of the trial work period (see § 352.4 above). Upon expiration of the trial work period, the work should be evaluated in accordance with § 330ff.

When preparing a continuance determination in a case where the individual has been working less than 9 months, if further and substantial improvement is anticipated (§ 347ff), the SA should indicate the appropriate date for a subsequent medical reexamination diary. However, ordinarily the diary should not be scheduled earlier than the anticipated 9th month of work, at which time, an investigation of both the medical improvement issue and work activity may be conducted simultaneously. If cessation is justified on the basis of substantial gainful activity, medical development would be unnecessary. However, if at the expiration of the anticipated 9th month of work it is found that the individual did not, in fact, work in all 9 months or his work does not constitute SGA, his case will still be investigated from a medical improvement standpoint.

E. *Cessation.*—Where the SA obtains current medical evidence which indicates a cessation is in order, the SA should find cessation in the month established by the medical evidence, irrespective of whether this coincides with the month of return to work. Retroactive cessation to the month work began should not be found unless the facts (medical and work) convincingly demonstrate the propriety of such action (see § 353.5). For example, if the beneficiary was still severely impaired at the time he returned to work but

recovered by the time of a consultative examination, the month of cessation would be the month of the consultative examination rather than the month of work resumption.

*353.3 Possible Medical Recovery—No Return to Work*

A. *General.*—Cases involving matured medical reexamination diaries and other issues of possible recovery, such as, report of release from a hospital, report of improvement, etc., will be sent directly to State agencies on Form SSA–847 (BDI Request for Case Action). Cases transmitted under this section (where the beneficiary has not reported a return to work) will be noted on Transmittal "Re-Exam Diary, etc. CDI § 353.3".

B. *State Agency Action.*—The SA will review the file in accordance with the following instructions and contact the beneficiary and appropriate medical sources to obtain the evidence that is necessary to determine if disability is continuing or has ceased. When information is received that the beneficiary has returned to work, the SA will utilize the adjudicative concepts under § 353.2.

Occasionally, SA's may find that a medical reexamination should not have been scheduled (§ 347ff). In other cases, the file may reveal that the beneficiary has died so that there is no current CD issue. The SA will return such cases to BDI on route slip Form OAAD–408 (without an SSA–833) with an appropriate notation under remarks such as, "No CD Issue—Beneficiary Died". Include in the folder any supporting evidence; where appropriate, prepare a report of contact (see subsection IIA2b of DIL II–36—Transmittal of Folders to SSA).



1. *Initial State Agency Contact with Beneficiary*—The SA will contact the beneficiary to inform him that it has been requested by SSA to determine whether he continues to be unable to engage in SGA by reason of his impairment and to obtain information concerning: (1) sources of medical treatment, and (2) his participation (including any work) in a State VR program, if any, and (3) his opinion as to whether his condition has improved so that he is able to return to work. This initial contact may be made by mail or telephone.

a. *Contact is by Mail*—Form SSA–454(a) (Social Security Disability Benefit Report) (Exhibit 8a) should be used where the contact is made by mail. Complete the form by entering the SA name and address, the date, the beneficiary's social security number, name, and address, and the SA's director's name (or his designee). A pre-addressed, postage paid envelope should be included. If a reply is not received, an appropriate followup (by mail or phone) should be made as soon as possible but not later than *two* weeks after the initial mailing. If the form is returned and the response is adequate follow § 353.4. If the response is not adequate or not received, develop through the district office in accordance with (B)(2) below.

b. *Contact is by Telephone*—Where the initial contact is made by telephone, the SA should use Form SSA–454(a) as a guide to assure that all pertinent questions are asked. The beneficiary's answers should be recorded on the SSA–454(a) and the form annotated to show that the information resulted from a telephone conversation. Always record the name of the person providing the information on the form. The beneficiary (or payee) should be informed that the information he furnishes (and other information received) will be used to determine his continuing enti-

tlement to disability benefits. Send a copy of the completed SSA–454(a) to the beneficiary for his information, any necessary revision, his signature, and prompt return.

The check-payee (i.e., the beneficiary or his designated representative) is responsible for reporting events affecting payments. In the interest of assuring administrative due process in continuing disability investigations, the SA will initially attempt to conduct the telephone (or mail) contact with such payee. When the SA contact is with someone other than the check-payee, the SA should satisfy itself that he is an acceptable source before requesting information to complete the form, i.e., a competent adult in a position to supply reliable information *on the beneficiary's behalf*. For example, the SA may telephone the beneficiary in an effort to secure information needed to document its continuing disability investigation. The beneficiary's wife residing at the same address answers the phone and explains that the beneficiary is working. She provides full details. As in the preceding paragraph, send a copy of the report to the beneficiary (or representative payee) and ask his confirmation in writing whether the facts reported are accurate.

2. *Requesting DO Assistance.*—There may be situations where the SA is unable to complete its development without the assistance of the district office. When it is necessary to forward a file to the district office, use Form SSA–883 (Request for Evidence or Assistance—Disability Cases) and give an appropriate explanation of development needed.

Situations in which the SA may request district office assistance, will include cases where



The beneficiary has not responded (after appropriate follow-ups by mail or telephone) to requests for information, or

The beneficiary response is inadequate to resolve the issues raised, or

Assistance is needed in securing specific information and the SA believes the DO is in a better position to obtain it.

When a personal contact is made by the DO, an SSA–454 (Report of Continuing Disability Interview) will usually be completed as well as a Form SSA–821 (Work Activity Report) where indicated. Upon completion of its action, the district office will return the folder to the SA. In cases where the DO is unable to contact or locate the beneficiary, the case will be processed in accordance with § 356ff.

*353.4 Development of Medical Evidence*

A. *Development of Current Evidence.*—1. *Evidence of Record.*—If the beneficiary reports that he has returned to full-time work and there is no indication of significant medical restrictions, no further medical development is needed (§ 353.2B). Otherwise, the SA must develop appropriate evidence from medical sources (such evidence should be developed even though the beneficiary reports that he has recovered sufficiently to be able to engage in SGA). The responsibility for medical development in continuing disability is placed primarily upon the State agencies. If the beneficiary has a current treatment source, that source should always be requested to furnish evidence of record describing the beneficiary's current condition. Even though it may be necessary to request a CE to resolve the question of continuing disability, the presence in file of reports from the beneficiary's medical

sources will better insure that no pertinent evidence has been overlooked and thus insure the soundest possible basis for making determinations.

2. *Consultative Examinations.*—When evidence of record concerning the beneficiary's condition is not available, is not based on a recent examination and for this reason is not convincing about the beneficiary's current condition, or is not sufficiently detailed in terms of signs, symptoms, and laboratory findings to enable a sound independent medical judgment to be made, a consultative examination should be purchased. In selecting a consultative examiner the attending physician should be given first consideration (see § 244). When contacting the attending physician, special care should be exercised to clearly explain the reason for requesting a current examination, i.e., to determine whether the individual may continue to receive disability benefits because he still has a severe impairment, or whether his condition has so significantly improved that he would no longer be entitled to disability benefits. Also explain that his report could be the basis for a decision which would result in the termination of the individual's disability benefits. Some physicians may be very reluctant to serve as the sole or primary source of information which might result in the loss of benefits for their patients. Where the attending physician objects to performing a current examination for the SA, other examination sources should be utilized.

B. *Conflicts Between Beneficiary and His Medical Source.*—Ordinarily, where improvement occurs which permits return to work, this fact will have already been communicated by the attending physician to the beneficiary. If, however, when contacted in accordance with § 353.3B(1), the beneficiary states that his doctor did not recommend that he return to work, or



the beneficiary still feels he is unable to work because of his impairment, but the medical evidence received from his attending physician indicates that the beneficiary is no longer disabled, there is a conflict that needs to be resolved. The sensitivities involved here suggest the need for delicate handling. In some cases it may be desirable to arrange for a CE by an independent medical source before making a determination.

C. *Documenting File.*—Material medical source evidence used to establish that the beneficiary is no longer under a disability should be in writing, signed by the source of the information, and the source should be properly identified. Therefore, when development of such evidence is accomplished by telephone, a copy of the report should be sent to the source for signature and return. An exception can be made where a signed, written report was previously received during the current investigation and it is necessary only to confirm some detail by telephone; here, a report of telephone conversation signed by the SA examiner is sufficient (see §§ 216 and 217).

*353.5 Evaluation of Medical Evidence*

A. *General.*—Where return to work does not provide a basis for cessation based on SGA after a TWP (§ 352.5), or under the clear-cut concept of medical recovery (§ 353.2B), evidence from medical sources describing the beneficiary's current medical condition (see B below) will be controlling in arriving at a decision. As in the case of establishing entitlement to benefits initially, the relevant medical evidence for determining continuing disability must be sufficiently detailed as to signs, symptoms, and laboratory findings to enable a sound judgment to be made by an independent reviewer of the record. Detail is espe-

cially needed when certain evidence indicates cessation but the beneficiary says that he is unable to return to work because of his impairment, or that his doctor has placed restrictions on how much or what kind of work he may do.

B. *Evaluation Guides for Determining Whether Disability Continues.*—The standards and the evaluation guidelines that apply in determining initial entitlements to benefits also apply for determining whether disability continues. There could be exceptional situations encountered, however, where though the CDI reviewer is of the view that disability does not presently exist, there is evidence that medical improvement has not occurred since the initial disability determination of allowance or the most recent continuance determination. In other words, there may be a question whether the individual was properly entitled to benefits in the first place or whether benefits should have been previously continued. In this situation, absent significant improvement in vocational competence (as described below), the only recourse is reopening the previous favorable determination. This in turn is limited by the rules of administrative finality (see § 277(A)(1)). Such reopening (when requested by BDI) should be done, however, only where the previous determination is wholly unsupportable by the evidence—not just because of differences in judgment. In a rare case, where the medical evidence is such that the question of improvement cannot be resolved, that is, functional loss at the time of the CDI cannot be satisfactorily compared with the functional loss at the time of a previous finding of disability, a determination as to continuing disability may be made on the basis of current assessment of the beneficiary's condition.



Where the beneficiary's medical condition remains unchanged, but his vocational competence has improved significantly, e.g., he has acquired new relevant skills by reason of completing a training course in vocational rehabilitation, a new evaluation in terms of present capacity to engage in SGA would be required in accordance with DIL III–3. (Identify any cessation determination prepared under this paragraph for policy review and route folder to BDI–DDPP in accordance with section II(A)(2)(a) of DIL II–36.)

### *353.6 Subsequent Contact with Beneficiary Prior to Effectuation of Determination of Cessation on Account of Medical Improvement*

A. *Evidence Conflicts with Beneficiary's Allegations.*—Where the medical evidence conflicts in any way with the beneficiary's assessment about the severity of his impairment, or about the date of cessation of such impairment, the beneficiary should be again contacted before a determination of cessation is made. (*Exception:* Where beneficiary was recontacted prior to suspension of benefits (see "C" below) and the same conflict existed at that time, further contact at the point of cessation is not required.) A conflict arises when the beneficiary has informed the SA that his condition has not improved (Item 1(a) of the SSA–454(a) is answered "No") but the medical and other CD evidence justifies a cessation of disability (see § 353.4B). The beneficiary should be informed by mail or telephone of the proposed adverse action, given a brief summary of the evidence on which it is based and a reasonable opportunity (i.e., at least 10 working days) to respond in writing; if he wishes to obtain and submit additional evidence which may be material in support of his claim, he may be granted an additional time (i.e., 20–30 days) to present such evi-

dence. When a telephone call is made, document file with a report of contact.

The objective of the foregoing is to provide a beneficiary who feels he is still disabled with opportunity to present evidence to rebut that already in file showing he is no longer disabled.

When it is necessary to so contact the beneficiary (entitled as a DIB, DWB or CDB) by mail, the model language in subsection B below may be used before adverse action, if any, is taken.

In the alternative the State agency may develop its own letter provided such letter includes all of the following basic points.

Tell beneficiary that we are assisting the SSA in reviewing his case to determine whether he is still unable by reason of his medical impairment from engaging in SGA.

Notify him that based on evidence now in file it appears that a determination would have to be made that he has regained ability to engage in SGA (month/year).

Give in lay terms a brief summary of the evidence and explain why it appears that he has regained ability to engage in SGA.

Explain that we are writing at this time to give him an opportunity if he feels he is still unable to work by reason of his impairment to present any additional evidence he wants us to consider.

Tell him that unless we hear from him within 10 days the State agency will forward his records on to the Social Security Administration where formal determination will be made. Point out that it is important, therefore, that he let us know within 10 days if he wants to submit



a statement or evidence (even though he may need more time to submit it).

Explain that when formal determination is made he will be notified by SSA in writing what the determination is. Also that if it is determined he has regained ability to engage in SGA and therefore that his disability has ceased, he will be eligible to receive benefits for the month in which disability ceased and for each of the two months following that month.

B. *Model Letter.*—"Earlier, we told you we were assisting the Social Security Administration in determining whether you remain eligible to receive monthly benefits on account of disability. To be eligible for such benefits you must be unable to engage in any substantial gainful activity by reason of your impairment.

"On behalf of the Social Security Administration, this is to notify you that based on evidence now in file it appears that a determination would have to be made that you regained ability to engage in substantial gainful activity in—(month/year). (Give in lay terms a brief summary of the evidence and explain why it appears the beneficiary is no longer under a disability. (see § 353.7 for examples.))

"We are writing at this time to give you the opportunity, if you feel that you are still unable to work by reason of your impairment, to present any additional statement or evidence you want to be considered before a determination is made. If you want to submit such a statement or evidence, please send it to us within the next 10 days using the enclosed envelope which requires no postage.

"If you do not write us within 10 days, we will forward your records on to the Social Security Ad-

356-468 O - 74 - 5

ministration where formal determination will be made as to your continuing entitlement to benefits. *It is important, therefore, that you let us know within 10 days if you want to submit a statement or evidence even though you may need more time to submit it.*

"When a formal determination is made, you will be notified in writing by the Social Security Administration what the determination is. If it is determined that you have regained ability to engage in substantial gainful activity and therefore that your disability has ceased, you will be eligible to receive benefits for the month in which disability ceased and for each of the two months following that month."

Contacts with the beneficiaries whether by telephone or by mail should be documented in the file. The SA will set up appropriate diary controls and take action to finalize its determination and send the folder on to BDI at the appropriate time in light of developments. The SA is not ordinarily expected to followup with a beneficiary who fails to respond to the model letter; if there is no response in 15 days, the SA will complete its action. Where the beneficiary does respond to the model letter but requests more time to get additional evidence, the SA should follow up 20 days thereafter if the evidence is not forthcoming. Ordinarily, in such a case, the SA should be in a position to finalize its determination *no later* than the 40th day after the model letter was sent to the beneficiary.

Where additional information is received *and* such information does *not* alter the proposed finding of cessation, the SA will prepare a brief acknowledgement along the following lines. (*Note:* Do not include any statement as to the significance of the information received.)

"This acknowledges receipt of the additional information you sent to us. It will be considered along with



the other evidence in your case in arriving at a determination as to your continuing entitlement. When the formal decision is made, you will be notified by the Social Security Administration."

C. *SA Notice to Beneficiary of Proposed Suspension Action.*—As in "A" above, the SA should always advise the beneficiary (or his respresentative) of any proposed action to suspend benefits (in accordance with § 265.1D), before taking action to recommend suspension to BDI.

### *353.7 Preparation and Content of "Summary of Evidence" on which a Proposed Cessation or Termination is Predicated*

A. *General.*—This section provides guides and instructions for State agency preparation of brief summaries of evidence when it is necessary to contact a beneficiary in accordance with § 353.6. Summaries should be tailored to individual case situations and should be prepared in such a manner as to enable beneficiaries to understand better the reasons for cessation. No meaningful purpose is accomplished by presenting the beneficiary with a list of clinical, laboratory and diagnostic terms. A summary of evidence in proposed cessations can be effectively explained by using the following format:

1. *Medical Evidence.*—State the basis for the initial allowance and briefly explain how the CD evidence shows improvement (i.e., show the extent of restored functions). Translate laboratory, clinical and diagnostic findings in terms of current (work related) physical or mental capacity.

2. *Vocational Evidence.*—Where material to making determination in the case, briefly cite pertinent facts regarding age, education, training, and/or skill level of the beneficiary. Such facts would always be

material where determination is based on the beneficiary's ability to return to other than his usual work.

3. *Reasoning and Conclusion.*—Provide rationale for conclusion that beneficiary has regained ability to engage in SGA.

B. *Examples.*—The following subsection illustrates summaries that can be used.

1. *TB Case.*—You were initially found to be disabled because of tuberculosis. The evidence shows that the medical treatment you have received for tuberculosis has been successful and that you have regained your strength. Although you have stated that you are too short of breath to return to work, special studies recently obtained show that your breathing capacity is good. For this reason it would appear that you are able to return to your usual work.

2. *Back Surgery—Surgery since allowance.*—You were initially found to be disabled because of a back condition. You have stated that your back is still too painful to allow you to return to work. The medical evidence shows you have undergone surgery for correction of this condition and that the surgery was successful with the result that your only present restriction is to avoid heavy lifting. Since your usual occupation does not require heavy lifting, it would appear that you can return to work.

3. *Rheumatoid Arthritis.*—You were initially found to be disabled because of rheumatoid arthritis. The medical evidence in file shows that treatment you have had for your rheumatoid arthritis has been successful. You have stated you are still unable to work because of stiffness and painful joints. Although you do still have some stiffness and occasional pain in the shoulders, the evidence shows your condition overall has improved sufficiently so that you are able to return to your usual work as a bookkeeper.



4. *Fracture Cases—(ability to return to other than usual work, high school education, 34 years of age.)*—Your were initially found to be disabled because of fractures of your right leg and hip. You state that you are unable to go back to your job as a stevedore because your leg has not healed properly. The medical evidence about your present condition shows that your fractures have solidly healed, although you do have some limitation of motion of the hip and knee so that you walk with a limp. We recognize that you may not be able to return to stevedoring because of this condition. However, with your educational background and at your age you should be able to qualify for many types of other work not requiring special skills, nor as much physical exertion, which you should be able to do. Some examples would be machine tending, assembling, and materials packaging.

*354.—Special Evaluation Considerations*

The following considerations assume particular importance in evaluating continuing disability cases:

A. *Discharge from a Hospital.*—The fact of discharge from a mental institution or tuberculosis sanatorium should not, standing alone, be considered sufficient evidence of medical recovery. Evidence to show current physical or mental status is essential.

B. *Temporary Improvement.*—Improvement that is only temporary does not warrant a finding that recovery has occurred. The probable duration of improvement or recovery and the prognosis should be carefully considered, particularly if the disease is characterized by periods of remission followed by relapse. The file will usually contain pertinent medical information to show the history of the disease process in the individual case. Generally, this information will be helpful in determining the probable duration of

improvement or recovery. All factors must be considered before it is concluded that recovery is not merely temporary.

C. *Examination reflecting Result of Rest.*—Conditions which become comparatively symptom-free after prolonged rest must be given careful consideration. Only where it can reasonably be expected that the improvement can be maintained under ordinary conditions of life in a work setting of the type for which the individual is qualified may a finding of cessation be made.

D. *Medical Regimen.*—Generally, when an individual is hospitalized or a treating physician markedly restricts an individual's activities, the signs, symptoms and laboratory findings will establish that an impairment exists which continues to prevent the individual from engaging in any substantial gainful activity. Hospitalization, prescribed therapy which prevents work, or a judgment by the treating source that the individual should not work are not, in themselves, sufficient evidence to support a finding of continuance. However, in making an independent judgment as to an individual's ability to engage in substantial gainful activity the judgments of the applicant's treating physician should not be dismissed lightly. Careful consideration must always be given to the possibility that the treating physician has additional medical information, not reflected in the file, which might support a finding of continuance. If, however, full development has been undertaken and the evidence does not support a finding of disability under existing policies and regulations, a finding of cessation would be appropriate.

E. *Recommended Treatment not Followed.*—In those cases where the previously recommended treatment has not been instituted, the State agency should



develop all pertinent aspects, particularly with respect to *why* the recommended treatment has not been carried out. Where the evidence establishes that the individual has willfully failed to follow prescribed treatment which could be expected to restore his capacity to engage in substantial gainful activity, a finding of cessation should be made with the month in which the evidence clearly establishes such failure.

### *354.1 Participation in a State-Sponsored Vocational Rehabilitation Training Program*

A. *General.*—One of the objectives of our program is to encourage the rehabilitation of disabled individuals. Consequently, we do not want to interfere unnecessarily with any rehabilitation effort. On the other hand, we are required to discontinue the payment of disability insurance benefits when the medical and vocational evidence clearly establishes regained capacity for substantial gainful activity, whether or not the beneficiary has returned to work.

These guides apply to all cases except that the substantive evidence for a determination for disabled widows and widowers (DWB) must reflect whether severity still meets or equals the medical Listing. When the level of severity no longer meets or equals the Listing of Impairments, cessation is necessary. It is not appropriate to consider vocational factors as is done in the case of disabled workers (DIB) or adult children (CDB) who do not meet the prescribed level of severity. Also, the trial work provisions do not apply to disabled widows and widowers.

B. *Cases in Which Medical Recovery Not Expected.*—Our policy of scheduling medical reexaminations only for specific categories of impairments from which the individual may recover usually permits individuals who are *not scheduled* for future medical

re-evaluations to continue in rehabilitation programs and not have their social security disability benefits terminated until they have demonstrated by actual work activity that they are no longer prevented from engaging in substantial gainful activity.

C. *Cases Involving Potential Medical Recovery.*—When the disabling effects of the individual's impairment may not remain at a severe level, it is necessary to re-evaluate the impairment at a future date to determine whether entitlement to disability benefits continues. In these instances, both the beneficiary and the vocational rehabilitation agency are advised of our plans to conduct a future investigation because of possible medical improvement. The vocational rehabilitation counselor is furnished a copy of the disability determination and the beneficiary is notified when we expect to re-evaluate his entitlement to future benefits. A beneficiary may be in a vocational rehabilitation training program when the continuing disability issue arises.

D. *Vocational Rehabilitation Agency—A Source of Valuable Evidence.*—When an individual is known to a State Vocational Rehabilitation Agency at the time of the continuing disability investigation, evidence from that agency should be obtained before soliciting or purchasing medical evidence. The evidence available through the vocational rehabilitation agency may be sufficient to permit a sound determination as to whether disability continues without purchasing additional evidence or disrupting vocational rehabilitation activity by a medical work-up.

E. *District Office Ascertains Whether Individual is Participating in Vocational Rehabilitation.*—When the continuing disability investigation is made, the district office, at the time of its interview with the individual, will ascertain whether the beneficiary is known



to a State Vocational Rehabilitation Agency, and if so, the name of the counselor and/or the address of the office servicing him, as well as the type of services being received.

F. *State Agency Secures Vocational Rehabilitation Evidence.*—Where the information received from the district office indicates the individual is participating in a State-sponsored vocational rehabilitation program, the State agency should contact the vocational rehabilitation agency for a full report about the individual. The information requested should include medical reports relating to the client's current medical status and other data pertinent to a determination involving an issue of medical recovery. Depending on local circumstances, this information may be obtained in the form of a written statement from the rehabilitation agency or copies of vocational rehabilitation records or it may be recorded on a report of contact as a result of a personal or telephone contact.

If data previously obtained from the vocational rehabilitation agency (e.g., in connection with the initial adjudication or an SSA–853 vocational rehabilitation closure report) indicated that the case was closed and the beneficiary states that his case has not been reopened, a further contact with vocational rehabilitation need *not* be made.

G. *Documentation of Recovery.*—The evidence received from the vocational rehabilitation agency should be considered with all of the other evidence bearing on the beneficiary's ability to perform substantial gainful work. Current medical evidence, including a consultative examination, if necessary, should generally be obtained when the evidence from vocational rehabilitation is not current or sufficient to determine whether disability continues. In no instance can a "clear-cut"

cessation be made without current medical development in accordance with DISM 353.2 where vocational rehabilitation services are continuing since participation in vocational rehabilitation constitutes "evidence to the contrary." Medical recovery may normally be found when current medical evidence establishes a present capacity for engaging in substantial gainful activity. When the medical evidence establishes such capacity, cessation must be found despite the fact that the individual may be an active participant in a State-sponsored vocational rehabilitation program.

H. *Continuance Without Current Medical Evidence.*—There will be instances where the evidence from the vocational rehabilitation agency will be sufficient to permit a finding that disability is in fact continuing without the need for securing current medical evidence. However, a continuance must not be found solely or primarily because the beneficiary is actively participating in vocational rehabilitation. Rather, the evidence must permit a reasonable conclusion that any further medical development would substantiate a continuance.

I. *Completion of Rehabilitation Services.*—Rehabilitation services include surgery or other medical treatment necessary to correct or substantially modify a physical or mental condition, prosthetic devices, training and job placement. Upon completion of vocational rehabilitation services, the vocational rehabilitation agency sends Form SSA–853 (Vocational Rehabilitation Report to SSA) to the Bureau of Disability Insurance. The folder is then screened for any current or potential continuing disability issue. The information contained in the form from the vocational rehabilitation agency may be sufficient to permit the Bureau of Disability Insurance (1) to conclude that no action is necessary, e.g., where closure is unrelated



to work activity; (2) to establish a trial work diary, e.g., when the beneficiary is engaged in trial work and less than 9 months of such work have elapsed (no medical diary case); or (3) to initiate a continuing disability investigation, e.g., where there may be substantial work following 9 months of trial work. A continuing disability investigation may also be necessary when the information provided on the SSA–853, although inconclusive, raises the possibility a continuing disability issue has actually arisen.

J. *Examples.*—1. Claimant was allowed because of a psychiatric impairment. A CDI was made before the reexamination date came due when notice of a return to work was received. The report on the Form SSA–454 (Report of Continuing Disability Interview) disclosed that the beneficiary was employed part time and was also participating in a State-sponsored VR program. The State agency requested medical and vocational data from the VR agency. The evidence showed that the individual had demonstrated improvement and was doing well in his training program; however, he continued to be markedly restricted and further and substantial medical improvement was expected. Although the medical evidence received was oriented toward rehabilitation goals and did not permit a functional assessment, it was sufficient, together with the report of the continuing disability interview and the evidence previously of record, to support a decision of continuance. The team recommended a medical reexamination in 6 months to coincide with the anticipated expiration of the trial work period at which time an investigation of both the medical improvement issue and work activity may be made simultaneously.

2. Claimant was allowed because of multiple fractures and complications which indicated his disabling

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condition would meet the 12-month duration requirement. When the medical reexamination diary came due, the CDI disclosed he was enrolled in a 2-year bookkeeping course under a State-sponsored VR program. The State agency adjudicator obtained evidence from the VR, which included a statement from the counselor that medically he is "O.K."; however, he still had one year remaining in his schooling. The State agency then obtained current medical evidence which clearly established medical recovery. Therefore, a determination of cessation was made.

*355.—Grace Period for Termination of Entitlement*

CDB and DIB payments (and the period of disability) continue for the month in which disability is for any reason determined to have ceased, and the two succeeding months.

A beneficiary could, therefore, work for a period of 9 months with cessation in the 10th month, and receive payments for the 11th and 12th months. Even if disability cessation is not based on services actually rendered (i.e., it is based on medical recovery, failure to cooperate, etc.) the disability beneficiary (and any auxiliary beneficiaries) will nevertheless receive benefits for the month in which disability ceased plus 2 additional months, or a total of 3 months. Thus, there is a distinction between the month of *cessation* (i.e., when the individual is no longer disabled) and the month of *termination* of both benefit entitlement and the period of disability.

*356.—Failure to Cooperate and Whereabouts Unknown—General*

There are instances when an individual whose case is being investigated fails, without adequate reason, to cooperate when asked to furnish necessary medical or other evidence or to present himself for a physical



or mental examination. There are instances also when the beneficiary cannot be located at the time of a continuing disability investigation. In these cases, every reasonable effort should be made to locate the individual or have him cooperate. However, when a continuing disability determination is necessary but cannot be made on the medical and vocational evidence of record and the beneficiary has not been located or continues to be uncooperative following complete and appropriate development, cessation may be justified on the basis of failure to submit evidence of continuation of disability.

*356.1 Failure to Cooperate*

A. *Cessation, When Justified and Proper Date*—Cessation based on failure to submit evidence of continuation of disability as evidenced by an individual's failure to cooperate is justified when (1) a continuance issue cannot be resolved with the evidence of record, (2) efforts to have the beneficiary cooperate in obtaining the necessary evidence have been appropriate and reasonably complete but unsuccessful, and (3) the evidence indicates that in spite of such efforts the beneficiary's failure to cooperate will continue.

In these instances, disability shall be found to have ceased in the month specified by the DO or SA in the first verbal or written request made to the beneficiary telling him that unless he cooperated by a specified date, his benefits might be terminated due to his failure to submit evidence necessary for determining whether he continues to be under a disability.

This means that, before making a determination of cessation, the State agency should be certain that the evidence needed to support a substantive decision is in fact not in file or available, and that every reasonable effort to get it has been made. Preferably, the determination should identify the specific evidence needed

and should explain why it is needed as well as why it cannot be obtained.

B. *Documentation and Activity Before Transmittal to SA.*—The DO is instructed to make every reasonable effort to personally contact the individual. Should direct efforts fail, contact will be attempted through neighbors, friends, auxiliary beneficiaries, relatives, and other parties who may be in possession of information reflecting on the individual's uncooperative attitude or who may be helpful in having the beneficiary comply with the DO's request.

The results of these efforts and any helpful information will be fully set forth in the record in order to adequately confirm the beneficiary's lack of cooperation when such efforts have not been fruitful.

If the beneficiary had not received an explanation by telephone or personal contact regarding the effect of his failure to cooperate, a letter is sent to him telling him that unless he responds by a specific date, his benefits may be terminated because of his failure to submit required evidence of continuation of disability. When these efforts are not productive, the DO requests BDI to suspend benefits and forwards the case to the State agency.

C. *Adequacy of Developmental Efforts.*—The State agency should review the record to satisfy itself that all reasonable attempts have been undertaken by the DO to resolve the issue and that the beneficiary has, in fact, failed or refused to cooperate. Under doubtful circumstances, the case should be returned to the DO for further development accompanied by appropriate guidance and recommendations. The SA may also return cases to the DO for assistance when the issue of failure to cooperate first arises at the SA level, e.g., the beneficiary responds to DO requests for information but later fails to comply with the SA request for a consultative examination.



In determining whether the beneficiary has failed to cooperate without adequate reason, attention must be given to the possibility that the very nature of the beneficiary's impairment may be a valid reason for preventing him from cooperating. In cases involving psychiatric impairments, the circumstances surrounding the failure to cooperate issue should be resolved in accordance with DISM 248E and 248F.

D. *Determination Based on Medical and Other Evidence.*—While failure on the part of the beneficiary to cooperate by not submitting the required evidence will generally constitute sufficient basis for cessation of disability, an independent assessment of the medical and other evidence of record should be made and consideration given to whether a sound determination of continuance or cessation is warranted on the evidence of record.

Wage or self-employment postings or information obtained by the DO from an employer may be sufficient to provide a basis for evaluating work issues in accordance with DISM 330 and 352. Where it appears that average earnings are in excess of $140 a month over 9 or more months (SE earnings in excess of $1680), do not find cessation on the basis of failure to submit evidence of continuation of disability. Rather, assume continuous work beginning with the first month of the first quarter posted (or the month in which the work was reported to have begun) and find cessation effective (1) with the apparent tenth month of work, or (2) with the apparent first month of work if the individual is not entitled to a 9-month trial work period.

However, if cessation on the basis of failure to submit required evidence is clearly supported in an earlier month, it is proper to find cessation on that

basis rather than with the month justified by the evidence of work activity.

In some cases in which there is an issue of continuing disability, the failure of the beneficiary to cooperate in the continuing disability investigation will not necessarily prevent further development by the SA. The necessary evidence may be available from a medical source or from an employer and may be obtained without the cooperation of the beneficiary.

*Example:* A come-in letter dated February 5, 1967, was sent to a beneficiary recently discharged from a TB hospital requesting that he visit the district office. The beneficiary did not respond. All efforts to get him to cooperate were unsuccessful. A letter was sent explaining the possibility of termination of benefits if he did not get in touch with the district office by March 10. When he did not respond, the district office requested suspension of benefits and forwarded the file to the State agency for a determination. The State agency requested current medical evidence from the tuberculosis hospital and received a discharge medical summary. This hospital report established that the beneficiary's capacity for work was considered to be 8 hours per day at the time of discharge in January 1967. The SA therefore prepared a determination of cessation based on medical recovery with a finding that the beneficiary's disability ceased January 1967.

E. *Determination Based on Failure to Submit Evidence of Continuation of Disability (Failure to Cooperate).*—When a beneficiary has failed to cooperate and a determination cannot be made on the medical and/or vocational evidence of record, a cessation of disability is prepared based on failure to submit required evidence of continuation of disability. The de-



termination should enumerate all written and verbal efforts made to have the beneficiary cooperate, the dates such efforts were made, the beneficiary's response or lack of response to them, and it should explain the justification for the cessation action (§ 356.1A).

*Example:* A CDI was initiated when a medical reexamination diary matured in a nonmental case. A come-in letter dated February 15, 1967, was sent to the beneficiary. When the individual did not respond within the next 10 days, a telephone call was made by a claims representative. The beneficiary stated that he did not wish to come to the DO since he was still disabled. A visit was then made to the beneficiary's home by a DO representative but the individual refused to talk to him. A letter was sent on March 12, 1967, informing the beneficiary that unless he complied within 1 week with our request to appear at the DO, his benefits might be terminated due to his failure to submit evidence necessary for determining whether he continues to be under a disability. When the beneficiary failed to respond, auxiliary beneficiaries were contacted. They said the beneficiary was capable of going to the DO and that he is a very obstinate person but not a mental case. The folder was then sent to the SA with the full documentation of all DO efforts and results, including information that they requested suspension of benefits. The evidence of record did not permit a determination on the basis of medical recovery or work activity. Consequently, the SA found cessation on the basis of failure to submit evidence of continuation of disability as evidenced by his failure to cooperate. The month of cessation was March 1967, as "specified" in the DO letter.

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*356.2—Whereabouts Unknown*

A. *Cessation, When Justified, and Proper Date.*—Cessation based on failure to submit evidence of continuation of disability as evidenced by an individual's whereabouts being unknown is justified when (1) a continuing disability determination is necessary (§ 351), (2) a decision cannot be made on the basis of the medical and other evidence of record, and (3) following appropriate attempts to locate the beneficiary, his whereabouts remain unknown. In these instances, disability shall be found to have ceased effective with the first month in which there was knowledge that the beneficiary's whereabouts were unknown but no earlier than the month in which a continuing disability issue arose.

B. *Documentation and Activity Before Transmittal to SA.*—When a beneficiary cannot be located at his last known address, the DO attempts to ascertain the individual's whereabouts through the postmaster and through personal visits with individuals who may know the whereabouts of the beneficiary, e.g., landlord, merchants, neighbors, and auxiliary beneficiaries. All efforts to locate the individual are fully recorded and when development is complete but unproductive, the folder is returned to BDI.

BDI reviews the folder first to determine whether a continuing disability issue actually exists and if so, whether a decision can be reached on the medical and other evidence of record. If further contact with the beneficiary is necessary before such a decision can be made, BDI will take whatever further action may be appropriate. The name and address of recent employers may be identified or the address on self-employment tax returns may be ascertained so that additional efforts may be made by the district office to locate



the beneficiary through an employer contact or at a home address not previously known.

Those cases in which a continuing disability determination is needed, and no further leads are uncovered for the DO to develop, are sent to the State agency. Where indicated, benefits are suspended by BDI.

C. *State Agency Action.*—Except for the development of medical evidence which is the primary responsibility of the SA, whereabouts unknown cases will ordinarily be adequately developed in other respects when they are received in the State agency. The SA may be able to resolve the continuing disability issue through medical development if there is a likelihood that the evidence available may be determinative. For example, in the case of an individual who has eloped from a TB hospital, medical evidence from that institution may establish that the beneficiary's condition was still disabling when he left or it may show that he had actually recovered and discharge was imminent at the time of his disappearance. (See example under § 356.1D above.)

Example: A come-in letter dated February 1967 was sent to a beneficiary (multiple fractures) requesting that he visit the DO as a result of a matured medical re-examination diary. The letter was returned March 1967 by the Post Office as undeliverable. The DO attempted to ascertain the beneficiary's whereabouts by contacting the postmaster, neighbors, and auxiliaries but was unsuccessful. The file was subsequently returned to BDI. A search in central office did not turn up any additional information. Since the beneficiary's impairment is the type for which recovery is considered likely, a medical issue existed. Therefore, the file was forwarded to the State agency for a determination. The SA prepared a determination effecting

a cessation date of March 1967, when it first became known, after a continuing disability issue arose, that the individual's whereabouts was unknown.

D. *Determination Based on Failure to Submit Evidence of Continuation of Disability (Whereabouts Unknown).*—When a cessation of disability is prepared based on failure to submit evidence of continuation of disability as evidenced by an individual's whereabouts being unknown, the determination should enumerate the event which started the CD investigation, all efforts made to locate the beneficiary, the dates and results of the efforts made, and an explanation of the justification for the cessation action (§ 356.2A).

*356.3 Reopening Subsequent to Termination*

An individual whose disability benefits have been terminated as a result of failure to cooperate or whereabouts unknown may subsequently contact us and agree to submit evidence or undergo an examination. The reopening procedures will apply and the proper action to be taken is dependent upon the new evidence.

A. The evidence may show that the date of the earlier cessation was correct, i.e., that the month in which failure to cooperate or whereabouts unknown was established is the same month now justified by the medical and other evidence. A new SSA–833 should be prepared affirming the earlier SSA–833 cessation date but changing the basis for cessation from "failure to cooperate" or "whereabouts unknown" to either demonstrated ability to engage in SGA or to impairment no longer of sufficient severity.

B. The evidence may show the person has recovered or demonstrated the ability to engage in SGA but later than the month of cessation previously established as a result of failure to cooperate or whereabouts unknown. In such situations a new SSA–833 should be



prepared to reflect the later cessation date and the new basis for cessation established by the current evidence.

C. The evidence may show that (1) the cessation month previously found needs to be changed, and (2) the person is now disabled. In this instance a new SSA–833 should be prepared to reflect the cessation date established by the latest evidence, and a new period of disability established on an SSA–831 in the usual manner (DISM 267).

D. The evidence obtained currently when reviewed with the prior evidence establishes that the person has been continuously disabled. In this type of case a new SSA–833 should be prepared to reflect a continuance.

Form SSA-a21a — Exhibit 3a

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MARYLAND 21241

BUREAU OF DISABILITY INSURANCE

REPLY TO: DI:CE

Date

Social Security Number

Our records show:

☐ That you have worked since _____.

☐ $ _____ has been reported to your social security record for the period beginning _____.

As you were notified, your benefits may be stopped if you are again able to do substantial gainful work. Your medical condition may have improved enough for you to do this. But even if your condition has not improved your work may show that you now have the ability to do substantial gainful work.

The amount of your earnings is important in determining whether you are able to engage in substantial gainful work. The general rule is that if your earnings average more than $140 a month (your pay before payroll deductions), you are performing substantial gainful work. Unless you submit information that establishes that you do not have the ability to engage in substantial gainful work, a determination will be made that you are no longer under a disability and your benefits will be terminated.

Please answer the questions on the next three pages. Sign your name at the bottom of the last page. In order to prevent possible overpayments of benefits to you return the form promptly. Please use the postage-free envelope enclosed. Unless this form is returned within the next 10 days your benefits may be suspended based on the information already in your file. If you need more time please let us know.

If you have any questions, or need help in filling out the form, please telephone or visit any social security office. The people there will be happy to help you. You can find the telephone number and address in the telephone directory listed under "Social Security Administration," or you can ask at your local post office. If you visit the social security office, please take this letter with you.

Sincerely yours,

C. C. Hall
Assistant Director

Enclosure:
Pre-Addressed Envelope

SSA-L821(a) (6-72)



Form SSA—a21a — Exhibit 3a (Cont.) 1

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF DISABILITY INSURANCE

Form Approved.
OMB No. 72-R0861

## REPORT OF WORK ACTIVITY—CONTINUING DISABILITY

I understand that this report will be used to determine whether to continue or to stop my disability cash benefits and that evidence of continuing entitlement with respect to all matters must be submitted promptly, otherwise my benefits may be suspended based on the evidence already in file. Also, I understand that if the work as I describe it does not establish that I am able to engage in substantial gainful work activity, I will be found to be no longer under a disability and my benefits will be terminated.

1. Have you worked at any time since the date shown in the first paragraph of the preceding page?

☐ Yes If "yes", be sure to answer all the following questions. If any question does not apply to you, please explain in the space for remarks (number 10 on page 4)

NOTE:

☐ No If "no", skip questions 2 to 8 and go to question 9 page 4. (If earnings have been reported to your social security record - see amount entered in the first paragraph of the preceding page - but you have not worked, please explain in the space for remarks number 10 on page 4. For example state if the amount reported represents sick pay, vacation pay, etc.) If you cannot account for the reported earnings, please telephone or visit your social security office.

2. Please furnish the information requested about your present or most recent employer. Use paragraph 7 on page 3 to list any other employers you worked for since the date shown in the first paragraph of the preceding page.

NAME OF EMPLOYER

EMPLOYER'S ADDRESS

| DATE YOU STARTED WORKING FOR THIS EMPLOYER | MONTH | DAY | YEAR |
|---|---|---|---|
| | | | |

3. My total earnings (before payroll deductions) are

Per Week $ _____ or Per Month $ _____ or Per Hour $ _____

I am working _____ hours per week or _____ per day.

4. Since you started working for this employer, have there been any months in which your total monthly earnings (before any deductions) were $50 or less?

☐ No ☐ Yes If "yes", list each month and the amount earned that month.

5. Are you still working for this employer? ☐ Yes ☐ No

| If no, when did you stop working for this employer? | MONTH | DAY | YEAR |
|---|---|---|---|
| | | | |

Explain why you stopped working

Form SSA-821(a) (6-72) - 2 -

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6.

A. What is your Job Title?

B. Briefly describe your duties

7. If you have worked for other employers since the date shown in the letter on top of this form please furnish the following information for each employer.

| (a) Name of employer | (b) Address of employer |
|---|---|
| (c) Dates of employment | (d) Earnings per month before deductions |

(e) Any months where you earned $50 or less

(Use paragraph 10 on page 4 if you need additional space for describing work for other employers.)

8 (a) Has your doctor told you to limit your activities in any way?

☐ No ☐ Yes ☐ Did not say

(b) *If "Yes", give the name of the doctor and what he told you about limiting your activities.*

(c) When did your doctor tell you this?

(d) Does your impairment affect your ability to do your work?

☐ No ☐ Yes *(If yes, explain how.)*







9. Are you receiving services from or through the State vocational rehabilitation agency?

☐ No ☐ Yes *If "Yes," give*

Name and address of servicing rehabilitation office and counselor.

10. Remarks Use the space below for explanation of question number one. Also, enter here any additional information that you believe is important and will assist in the review of your continuing entitlement to social security disability benefits. *(If you need more space, use a separate sheet of paper. Also, if you wish, you may attach any evidence that shows your current condition.)*

11. Do you authorize any physician, hospital, agency, or other organization to disclose to the Social Security Administration or to the State agency that may review your entitlement for continuing disability benefits, any medical records or other information about your disability? ☐ Yes ☐ No

I certify that the above statements are true, correct, and complete to the best of my knowledge. I know that anyone who fraudulently conceals or fails to report a disqualifying event or who makes a false statement or representation of a material fact for use in determining a right to payment under the Social Security Act could be subject to a fine or imprisonment or both.

| SIGN YOUR NAME AS YOU USUALLY WRITE IT | DATE | PHONE NUMBER |
|---|---|---|
| ➡ | | |

If the address shown on page one of this form is incorrect or incomplete, please enter your present address here.

NUMBER AND STREET, APT. NO., P.O. BOX OR RURAL ROUTE

| CITY | STATE | ZIP CODE |
|---|---|---|
| | | |

*If we need more information after you send this form back to us, someone from the social security office or from the State agency that works with us on making disability decisions will get in touch with you.*

Form SSA-454a Social Security Disability Beneficiary Report — Exhibit 8a (page 1 of 4) cont.

Refer to
Social Security Number — Date

When your disability payments began, you were notified by the Social Security Administration that your condition might improve and your claim was scheduled for a future review. The Social Security Administration has requested us to develop current evidence as to whether your condition still prevents you from working.

To help us determine whether you are still entitled to disability benefits, please answer the questions on the next three pages, sign your name at the bottom, and return the form within ten days using the enclosed envelope which requires no postage.

If at any time medical evidence shows that your condition has improved so much that you are no longer disabled, you will still receive benefits for a 3-month period of adjustment. This period includes the month in which your condition improves and 2 additional months. Benefits will then be stopped.

If you have questions or need help in filling out the questionnaire, please telephone or visit any social security office. You can find the address in the telephone directory under "Social Security Administration," or ask at your local post office. If you visit the social security office, please bring this letter with you.

Sincerely yours,



Form SSA-454a Social Security Disability Beneficiary Report — Exhibit 8a (page 2 of 4) cont.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF DISABILITY INSURANCE

Form Approved.
OMB No. 72-R0910

## SOCIAL SECURITY DISABILITY BENEFICIARY REPORT

I understand that this report will be used to verify my continuing eligibility to benefits and should it be determined that I am no longer entitled, benefits will be terminated.

### INSTRUCTIONS FOR COMPLETING THE FORM

Answer each question as fully as possible.

If any question does not apply to you, write "none" in the space provided.

If you need more space to answer a question, use the back of this form or a separate sheet of paper. If you use a separate sheet of paper, please be sure to put your social security claim number on it.

Answer all parts of the following questions:

1. (a) Do you feel your medical condition has improved so that you are able to return to work?

☐ Yes ☐ No If No, explain below.

(b) Has your doctor told you that you are able to return to work?

☐ He said Yes If the answer is yes, when? _____ (give date)

☐ He said No ☐ He did not say

(c) Has he placed any significant restrictions on the kind of work you may do or how many hours a day you may work?

☐ No ☐ Yes If Yes, explain below

Describe below in your own words your present condition: be sure to list what you believe you are unable to do in terms of lifting, bending, pushing, etc., that interferes with your working again.

Form SSA-454(a) (6-72)

**Form SSA–454a Social Security Disability Beneficiary Report** — **Exhibit 6a (page 3 of 4) cont.**

2. Give name, address and telephone number of your physician(s) and of the hospital or clinic where you have received treatment for the condition that prevented you from working.

| (a) NAME OF PHYSICIAN, HOSPITAL OR CLINIC | DATE LAST TREATED |
|---|---|
| ADDRESS | TELEPHONE NUMBER |
| (b) NAME OF PHYSICIAN, HOSPITAL OR CLINIC | DATE LAST TREATED |
| ADDRESS | TELEPHONE NUMBER |
| (c) NAME OF PHYSICIAN, HOSPITAL OR CLINIC | DATE LAST TREATED |
| ADDRESS | TELEPHONE NUMBER |

3. Have you worked in the past 12 months?

☐ No ☐ Yes *If "Yes," be sure to complete all of the following items.*

| (a) NAME, ADDRESS AND TELEPHONE NUMBER OF EMPLOYER | (b) KIND OF WORK DONE | |
|---|---|---|
| (c) WHEN STARTED (Date) | (d) AVERAGE HOURS WORKED PER DAY | PER WEEK |
| | (e) AVG. GROSS EARNINGS (Before payroll deduct.) PER DAY | PER WEEK |

(f) ARE YOU STILL WORKING?

☐ Yes ☐ No *If "No," explain below why and give date you stopped working.*



**Form SSA–454a Social Security Disability Beneficiary Report** — **Exhibit 6a (page 4 of 4)**

4. (a) Are you receiving services from or through the State vocational rehabilitation agency?

☐ No ☐ Yes *If "Yes," answer question (b)*

(b) Name and address of servicing rehabilitation office and counselor.

5. **Remarks.** Enter here any additional information that you believe is important and will assist in the review of your continuing entitlement to social security disability benefits. *If you need more space, use a separate sheet of paper. Also, if you wish, you may attach any evidence that shows your current condition.)*

6. Do you authorize any physician, hospital, agency, or other organization to disclose to the Social Security Administration or to the State agency that may review your entitlement for continuing disability benefits, any medical records or other information about your disability?

☐ Yes ☐ No

I certify that the above statements are true, correct, and complete to the best of my knowledge. I know that anyone who fraudulently conceals or fails to report a disqualifying event or who makes a false statement or representation of a material fact for use in determining a right to payment under the Social Security Act could be subject to a fine or imprisonment or both.

| SIGN YOUR NAME AS YOU USUALLY WRITE IT | DATE | PHONE NUMBER |
|---|---|---|
| ▶ | | |

If the address shown on page one of this form is incorrect or incomplete please enter your present address below

NUMBER AND STREET, APARTMENT NO., P.O. BOX, OR RURAL ROUTE

| CITY | STATE | ZIP CODE |
|---|---|---|
| | | |

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